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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 727

BIBB GRAVES, AS GOVERNOR OF THE STATE OF ALABAMA, ET AL., ETC., APPELLANTS,

vs.

THE TEXAS COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

FILED JANUARY 29, 1936.

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[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DIVISION OF THE MIDDLE DISTRICT OF ALABAMA

No. 662

THE TEXAS COMPANY, a Corporation, Plaintiff,

v.

ALBERT A. CARMICHAEL, Attorney General of the State of Alabama; Henry S. Long, President of the State Tax Commission of Alabama, and John P. Kohn, Sr., and W. W. Ramsey, Associate Members of the State Tax Commission of Alabama, Defendants

BILL OF COMPLAINT

To the Honorable Judge of the District Court of the United States for the Middle District of the State of Alabama, sitting in the Northern Division of said District:

The Texas Company, a corporation organized and existing under the laws of the State of Delaware and a citizen of said state, brings this its bill against Albert A. Carmichael as Attorney General of the State of Alabama, Henry S. Long as President of the State Tax Commission of said state, and John P. Kohn, Sr., and W. W. Ramsey as Associate Members of the State Tax Commission of said state, citizens of said state, and whose residences are hereinafter stated, and plaintiff complains and says:

First. The plaintiff is a corporation duly organized and existing under the laws of the State of Delaware and duly qualified in accordance with the laws of the State of Alabama to do business in the State of Alabama. Plaintiff's principal place of business in the State of Alabama is in the City of Birmingham, Alabama.

Second. The defendant Albert A. Carmichael is the Attorney General of the State of Alabama. The defendant

Henry S. Long is President of the State Tax Commission of Alabama, and the defendants John P. Kohn, Sr., and W. W. Ramsey are Associate Members of the State Tax Commission of Alabama and as such the defendants are the officials of the State of Alabama charged with the administration, enforcement and execution of the acts of the Legislature of Alabama imposing certain excise taxes on the sale, distribution or withdrawal in Alabama of gasoline and other liquid motor fuels, which acts are hereinafter set forth or described in paragraph Fifth. Defendants are all citizens and residents of the State of Alabama and either now reside in Montgomery County, Alabama, or as such officers have their respective offices for the conduct of the State business with which they are charged in the City of Montgomery, Montgomery County, Alabama, in the Middle District of Alabama, and are all over the age of twenty-one years.

[fol. 2] Third. The amount involved in this controversy, exclusive of interest and costs, exceeds the sum or value of $3,000.00.

Fourth. The controversy arises solely under the Constitution of the United States and is based upon the alleged unconstitutionality of the statutes of the State of Alabama set out and referred to and either recited in paragraph Fifth hereof or attached as exhibits to this bill. And the plaintiff seeks herein both an interlocutory and a final judgment suspending or restraining the enforcement, operation and execution of said statutes by restraining the action of the officers of the State of Alabama above enumerated as defendants herein from the enforcement and execution of said statutes.

Fifth. In 1923 the Legislature of the State of Alabama enacted an act approved February 10, 1923 (General Acts of Alabama of 1923, p. 36), imposing an excise tax of two cents per gallon upon all gasoline or other liquid motor fuels sold within the state. The State Legislature in 1927 adopted an act approved August 27, 1927 (General Acts of Alabama of 1927, p. 326), materially amending the said 1923 Act. The 1923 Act as amended by said 1927 Act is as follows:

"Be it enacted by the Legislature of Alabama:

"That the title and Sections 1, 2, 3, 4, 5, 6, 7, 8, 11 and 12 of an act, entitled 'An Act imposing an excise tax on persons, corporations, copartnerships, companies, agencies or associations engaged in the business of selling, or distributing gasoline or other liquid motor fuels in this State—providing for the collection and payment of such tax and the distribution of the funds derived therefrom and fixing the penalties for the violation of any of the provisions of this act, approved Feb. 10, 1923, be and the same are hereby amended to read as follows:

"Section 1. That the Title of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: to impose an excise tax on persons, corporations, copartnerships, companies, agencies or associations engaged in the business of selling, distributing, storing or withdrawing from storage for any purpose whatsoever gasoline or other liquid motor fuel or devices or substitutes therefor in this State; and providing for the collection and payment of such tax and distribution of the funds derived therefrom, and providing for its enforcement and fixing a penalty for the violation of any of the provisions hereof.

"Section 2. That Section 1 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: as used in this act, the term 'gasoline' shall include gasoline, naptha and other liquid motor fuels or any devices or substitutes therefor, commonly used in internal combustion engines, provided that nothing contained in this act shall apply to those products commercially known as 'Kerosene oil', 'fuel oil', 'crude oil' used for lighting or heating purposes. The word 'Person' means and includes every person, corporation, copartnership, company, agency or associations, singular or plural. The term 'Distributor' shall include any person who shall engage in the selling of gasoline as herein defined in this State by wholesale in domestic trade, but shall not apply to any transaction by such distributor in interstate commerce. The term 'retail dealer' shall include any person herein defined as 'distributor' who is also engaged in the sale of gasoline as herein defined, at any place in this State, in broken quantities. The term 'storer' as herein used shall include any person who ships

gasoline into this State, in tank quantities and stores the same and withdraws or uses the same for any purpose.

[fol. 3]. "Section 3. (a) That Section 2 of the above mentioned act, approved Feb. 10, 1923, shall be made to rear as follows: Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the selling, distributing or withdrawing from storage for any use gasoline as herein defined in this State, provided however that this excise tax shall not be levied upon the sale of gasoline in interstate commerce, and provided further that where the excise tax of two cents per gallon upon the sale of such gasoline shall have been paid by a distributor or by a retail dealer or storer such payment shall be sufficient, the intention being that the tax shall not be paid but once. (b) The excise tax imposed by subdivision (a) of this section shall apply to persons, firms, corporations, dealers or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage, whether such withdrawals be for sales or other use—provided, that 'sellers' of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and storers and distributors shall compute and pay this tax on the basis of their withdrawal or distributions.

"Section 4. (a) That Section 3 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: On or before the 20th day of each month after this act shall have taken effect, every person upon whom this excise tax is levied shall render to the State Tax Commission on forms prescribed by such commission a true and correct statement of all sales and withdrawals of gasoline made by him or them during the next preceding month, liable for the payment of the excise tax herein prescribed, and shall furnish to said commission such additional information as such Commission may require upon blanks to be formulated and furnished by said Commission, and at the time of making such report shall pay to the State Tax Commission an amount of money equal to the excise tax herein laid. (b) The statement herein required to be made by the distributor, storer or retail dealer shall be sworn to before some officer authorized to administer oaths and any false or fraudulent statement sworn to shall constitute perjury

and upon conviction thereof the person so convicted shall be punished as provided by law for the crime of perjury.

"Section 5. That Section 4 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: All distributors, storers, or retail dealers shall keep, for not less than two years, within the State of Alabama at some certain place or office such books, documents or papers as will clearly show the amount of sales or withdraw-ls of gasoline made in this State covered by this Act.

"Section 6. That Section 5 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: within 30 days after the passage of this act, every distributor, storer or retail dealer engaged in the sale or withdrawal of gasoline shall make a report on blanks furnished by the State Tax Commission to the State Tax Commission showing the place and post office address at which he is engaged in the business of distributor or storer or retail dealer in gasoline, which information shall be entered by the State Tax Commission on a book kept for that purpose, and should such distributor, storer or retail dealer move his place of business from one post office address to another, such distributor, storer, or retail dealer shall within 30 days thereafter notify the State Tax Commission of such removal giving the former place and post office address and also the place and post office address to which the business has been removed. After this act becomes effective no person shall become a distributor, storer, or seller of gasoline in this State until he shall have made such reports to the State Tax Commission.

[fol. 4] "Section 7. That section 6 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: If any distributor, storer or retail dealer in gasoline in this State covered by the provisions in this act shall fail to make the reports or any of them, to the State Tax Commission as herein required, or shall fail to keep the records required by Section 5 hereof, such distributor, storer or retail dealer shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $50.00 nor more than $300.00 for each of such offense-.

"Section 8. That Section 7 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: It shall be the duty of the State Tax Commission to enforce

the provisions of this act and the State Tax Commission shall have the right itself or by any of its members or its agents to examine the books, reports and accounts of every such distributor, storer, or retail dealer of gasoline covered in this act.

"Section 9. That Section 8 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: The proceeds of the excise tax prescribed in this act shall, when collected, be paid into the State Treasury, and placed to the credit of the sixty-seven counties of the State, and shall be divided and distributed equally among the sixty-seven counties of this State and paid to each of the several counties as provided by law. Provided however, that all the funds derived by the several counties from said tax shall be expended exclusively for maintenance and repair of roads, highways and bridges in said county. The use or expenditure of any of said funds in any other manner or for any other purpose than as provided herein by the governing body of any county or any individual member of said body shall constitute a misdemeanor punishable by a fine of not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the county jail at hard labor for the county for not less than one nor more than twelve months. The State Highway Commission shall have the authority to inspect the work upon which such funds are expended, and if in the judgment of the State Highway Commission, it appears that such funds are not being expended profitably or correctly, the State Highway Commission, shall report the matter to the Chief Examiner of Public Accounts. The Chief Examiner of Public Accounts is hereby especially charged with the duty of examining into and determining each year whether or not said funds have been used or expended as herein provided. Whenever said Examiner of Public Accounts discovers a violation of any provisions of this section he shall forthwith report same to the Attorney General whose duty it shall be to direct the prosecution of said offense.

"Section 9. (This section brought forward from the 1923 Act without amendment) The acceptance of any amount paid for the excise tax provided for in this Act shall not preclude the collection of the amount actually due. However, the amount actually paid shall constitute a credit against the amount actually due.

"Section 10. (This section brought forward from the 1923 Act without amendment) The forms of all statements and reports required herein shall be prescribed and furnished by the State Tax Commission. All costs of the enforcement of this Act shall be paid out of the State's share of the funds derived from the excise tax herein prescribed, upon the warrant of the State Auditor drawn upon the voucher of the Chairman of the State Tax Commission and approved by the Governor.

"Section 10. That Section 11 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows: If distributor, storer, or retail dealer in gasoline covered by this act shall fail to make the monthly return and to pay the tax prescribed, as provided by this act, the tax shall be deemed delinquent within the meaning of this act, and there shall be added to the amount of the tax a penalty of twenty-five per cent. If in the opinion of the State Tax Commis- [fol. 5] sion a good and sufficient cause and reason is shown for such delinquency the State Tax Commission may remit the penalty, otherwise the penalty shall be paid. The State Tax Commission shall be authorized and empowered to make return for the delinquent tax-payer upon such information as it may reasonably obtain, and add thereto the penalty as provided in this section of this act. The State Tax Commission shall, as soon as is practicable, and before the 30th day of the month, certify to the State Auditor and the State Treasurer names of all persons liable to pay the tax herein provided together with the post office address and the amount of the tax, and if any such tax and penalties shall not have been paid, the chairman of the State Tax Commission shall issue execution for the collection of such tax directed to any sheriff of the State of Alabama, who shall proceed to collect the same in the manner now provided by law for the collection of delinquent tax by the county tax collectors and make returns of such executions to the State Tax Commission. The tax and all penalties herein provided for shall be held as a debt payable to the State of Alabama by the person against whom the same shall be charged and all such penalties and assessments shall be a lien upon the property in this State of the party charged therewith.

"Section 11. That Section 12 of the above mentioned act, approved Feb. 10, 1923, shall be made to read as follows:

Any distributor, storer or retail dealer who shall violate any of the provisions of this act may be restrained and the proper prosecution instituted in the name of the State of Alabama by its Attorney General or under his direction by any Circuit Solicitor of the State, from distributing, selling or withdrawing from storage any gasoline, the sale or withdrawal of which is taxable under this Act, until such person shall have complied with the provisions of this Act. This act shall take effect on the 1st day of the month next succeeding its passage, and upon approval of the Governor.

"Section 12½. Each freight agent of the Railroad Companies operating in the State of Alabama shall report to the State Tax Commission on the first day of October, January, April and July of each year all shipments of gasoline and lubricating oils or substitutes therefor received at said station on said railroads during the preceding three months, giving the name and address of the consignor and consignee, shipping and receiving said gasoline or lubricating oils or substitutes therefor and the number of gallons or pounds contained in each and every shipment.

"Approved August 27, 1927."

In 1931 the Legislature of Alabama amended the above mentioned act by an act approved July 15, 1931 (General Acts of Alabama of 1931, p. 458), the amendment to said act being as follows:

"Section 9. That Section 8 of the above mentioned Act, approved February 10, 1923, shall be made to read as follows: The proceeds of the excise tax prescribed in this Act shall, when collected be paid into the State Treasury, and placed to the credit of the sixty-seven counties of the State, and shall be divided and distributed equally among the sixty-seven counties of this State and paid to each of the several counties as provided by law. Provided, however, that all the funds derived by the several counties from said tax shall be expended exclusively for the maintenance, or construction or repair of roads or highways or bridges in said county. The use or expenditure of any of said funds in any other manner or for any other purpose than as provided herein, by the governing body of any county or any individual member of said body shall constitute a mis- [fol. 6] demeanor punishable by a fine of not less than one hundred dollars nor more than one thousand dollars, and

by imprisonment in the county jail at hard labor for the county for not less than one nor more than twelve months. The State Highway Commission, shall have the authority to inspect the work upon which such funds are expended, and if in the judgment of the State Highway Commission, it appears that such funds are not being expended profitably or correctly, the State Highway Commission, shall report the matter to the Chief Examiner of Public Accounts. The Chief Examiner of Public Accounts is hereby especially charged with the duty of examining into and determining each year, whether or not said funds have been used or expended as herein provided. Whenever said Examiner of Public Accounts discovers a violation of any provisions of this section he shall forthwith report same to the Attorney General whose duty it shall be to direct the prosecution of said offense.

"Section 2. That the acts or actions of County Courts of Commissioners or Boards of Revenue or other county governing bodies, in paying out or expending gasoline tax monies, before the passage of this Act under or by authority of the gasoline excise tax act, said act having been approved Feb. 10, 1923 and found at page 36 of the General Acts of the Legislature of Alabama of 1923, or expended under or by authority of an act of the Legislature of Alabama approved August 27, 1927 and found at page 326 of the General Acts of the Legislature of Alabama of 1927 and expended or paid out for the purpose of maintaining or repairing or constructing highways or roads or bridges in the county in which said monies may have been expended, are hereby validated, and after the passage of this Act no question shall be raised as to the validity or legality of such expenditures.

"Section 3. All general laws and parts of general laws in conflict with this act are hereby repealed.

"Section 4. This act shall go into effect immediately upon its approval by the Governor.

"Section 5. If any section, clause, provision or portion of this Act shall be held to be invalid, or unconstitutional, by any Court of competent jurisdiction, such holding shall not effect any other Section, clause, provision or portion of this Act, which is not itself unconstitutional."

The Legislature of Alabama in 1927 also adopted an act approved January 25, 1927, imposing an additional excise tax of two cents per gallon on the sale, distribution or withdrawal from storage of gasoline or other liquid motor fuels within the state (General Acts of Alabama of 1927, p. 16). The provisions of this act are set out in Exhibit A hereto attached and made a part hereof.

The Legislature of Alabama in 1931 adopted another act imposing an excise tax of one cent per gallon on all persons selling, distributing or withdrawing from storage gasoline or other liquid motor fuels in the state, which act was approved July 27, 1931 (General Acts of Alabama of 1931, p. 859). A copy of this act is hereto attached, marked Exhibit B, and is made a part hereof.

The Legislature of Alabama in 1932 adopted an act approved November 5, 1932 (General Acts of Alabama of 1932, p. 314), imposing an additional tax of one cent per gallon on all persons selling, distributing or withdrawing from storage gasoline or other liquid motor fuels in the state. A copy of this act is hereto attached, marked Exhibit C, and is made a part hereof.

[fol. 7] The Legislature of Alabama in 1935 adopted an act approved January 31, 1935, imposing an excise tax on all persons engaged in the business of selling, distributing or withdrawing from storage gasoline or other liquid motor fuels in the state of two cents per gallon, which suspended the operation of the two acts last above mentioned. A copy of this act is hereto attached, marked Exhibit D, and made a part hereof.

Under the acts now in effect a total tax of six cents per gallon is imposed on those engaged in the business of selling, distributing or withdrawing from storage gasoline or other liquid motor fuels.

The Legislature of Alabama in 1935 adopted an act approved July 10, 1935, which in effect consolidates the levies now in effect and imposes an excise tax of six cents per gallon on all gasoline or other liquid motor fuels sold, distributed or withdrawn from storage within the state. This act becomes effective on October 1, 1935, and a copy of the provisions of the act so far as here pertinent are hereto attached, marked Exhbiit E, and made a part hereof.

The above mentioned acts are hereafter referred to as "gasoline excise tax acts."

Sixth. Since 1927 the plaintiff has been and is now engaged in the business of manufacturing, refining, buying and selling gasoline and other liquid motor fuels commonly used in internal combustion engines and in such business is selling and offering for sale at wholesale and retail in practically every county in the State of Alabama gasoline and other liquid motor fuels of the character, kind and quality made the subject of the taxing provisions of the gasoline excise tax acts set forth or mentioned and described in paragraph Fifth hereof. Plaintiff's immediate predecessor in title and interest was engaged in said business in the State of Alabama for more than fifteen years before plaintiff succeeded to its rights, title and interest in said business.

Plaintiff has now invested a large amount of money, to-wit, over $1,000,000.00, in plant and equipment at its various places of business in the State of Alabama for the conduct of its business of offering for sale and selling in said state gasoline and other liquid motor fuels and other petroleum products, and intends in the State of Alabama to continue the conduct of said business in strict compliance with the laws of the State of Alabama in so far as such laws may be valid and constitutional, and in such conduct of its business will continue to offer for sale and sell large quantities of gasoline and other liquid motor fuels, meeting the specifications as to standard and quality and any other specifications required by the laws of Alabama. Plaintiff has not and is not now engaged in the business of storing gasoline or other liquid motor fuels in the State of Alabama, and has not stored and does not store such commodities except in connection with its business of selling such commodities in said state and then only to the extent that such storing is a part of or is necessary or incidental to its said business of selling said motor fuels in said state.

Seventh. Plaintiff has during the past five years sold and delivered in Alabama approximately 281,254 gallons of gasoline to the United States or to its departments or agencies, used by it as means for the performance of its governmental functions in the State of Alabama as follows: Department of Interior, Department of Commerce, Department of Agriculture, Department of Justice, War Department, Navy Department, Post Office Department, Treasury Department, Veterans Administration, and certain other

of its departments or agencies (which departments or agencies are included in the words "United States" when sales or withdrawals for sales to the United States are referred to herein) for which the United States has paid or agreed to pay prices which have not included or do not include any of the taxes imposed by said gasoline excise tax. All of said gasoline was withdrawn from storage in Alabama for the purpose of making sale and delivery of same to the United States. Due to the nature and character of the gasoline it is impossible to deliver same to the pur- [fol. 8] chasers thereof without withdrawing same from storage, as the act of withdrawal is a necessary constituent and integral element in consummating the sale.

Plaintiff in compliance with the provisions of the said gasoline excise tax acts has made reports each month on forms furnished by the State Tax Commission of Alabama showing the sales or withdrawals from storage of gasoline made by it as required by the acts, and has shown in spaces provided in said forms the amount of gasoline withdrawn from storage and sold to the United States. A copy of the opinion of the Attorney General of Alabama dated August 22, 1928, is hereto attached, marked Exhibit F, and is made a part hereof, and no officials of the State have demanded or sought to collect since the date of this opinion from plaintiff any taxes imposed by said gasoline excise tax acts on account of sales or withdrawals from storage for sales of gasoline to the United States until to-wit June 17, 1935.

On November 22, 1928, the Attorney General of Alabama rendered a written opinion to Honorable John G. Sargent, Attorney General of the United States, to the effect that on sales of liquid motor fuels to the United States in Alabama there was no tax intended, and that where the tax had been paid in the past on such sales, the State had no law by which refund could be made. A copy of this opinion is hereto attached, marked Exhibit G, and is made a part hereof.

On June 17, 1935, the plaintiff received at its Atlanta, Georgia, office a telegram dated June 17, 1935, as follows:

"The Texas Company, Atlanta, Georgia:

"A thorough audit of your books discloses that you have withdrawn one million three hundred thousand gallons gasoline from Alabama storage on which excise tax has not

been paid STOP Demand is hereby made on you for the payment of excise tax on this gasoline computed at the rate prescribed by law plus interest and penalty STOP Make check payable to undersigned and address reply to this office. Thomas E. Skinner, Special Agent, State Tax Commission."

Plaintiff is informed and believes and therefore avers that the basis for the claim for excise taxes on gasoline set out in said telegram was solely on account of gasoline withdrawn from storage in Alabama by the plaintiff for sale and delivery to the United States, and that the demand for payment of said alleged taxes, including interest and penalties, exceeds the sum of $100,000.00.

On July 5, 1935, the Attorney General of Alabama rendered another opinion to the State Tax Commission to the effect that refiners, storers and distributors of gasoline in this state were liable for the gasoline excise taxes on all gasoline withdrawn from storage in Alabama and sold or delivered to the United States. A copy of this opinion is hereto attached, marked Exhibit H, and is made a part hereof.

On, to-wit, September 1, 1935, plaintiff, at its Atlanta office, received a communication through the United States Mails from the State Tax Commission as follows:

"August 30, 1935.

"The Texas Company, Atlanta, Ga.:

"Under an opinion issued by the Attorney General's Department dated July 5, the State Tax Commission can not permit deductions from gasoline sales by reason of gallonage sold to the United States Government of Federal Agencies. Under this opinion the tax applies to all sales and withdrawals made in this State.

[fol. 9] "You will, therefore, please add to your August sales such deductions as you may have made when preparing your returns, covering July sales and remit the tax to this department along with tax for your August sales, on or before September 20.

"As you will recall, the Gasoline Department of this commission advised you under date of July 9, of the above mentioned opinion stating, 'This is for your information and guidance.'

"Please bear this in mind when preparing your returns in the future as no allowance can be made by reason of sales to the Federal Government.

"The above refers only to those companies which have been making sales to Federal Agencies and deducting such sales from the total number of gallons on which the tax is computed.

Yours very truly, State Tax Commission, by
(Signed) Henry S. Long, President."

Under the provisions of this letter it appears that the members of the State Tax Commission of Alabama are making demand that plaintiff pay the said excise taxes not only on account of its withdrawal from storage of gasoline withdrawn for the purpose of selling to the United States, but is also claiming that said taxes are due on account of all said sales made to the United States.

Eighth. Plaintiff, since May 14, 1928, the date of the decision of the Supreme Court of the United States in Panhandle Oil Company v. State of Mississippi ex rel. R. H. Knox, Attorney General, has been almost continuously and is now withdrawing gasoline from storage in Alabama for the purpose of delivering and selling same to the United States in Alabama, but it has not since that date and is not now including the amount of the excise taxes imposed by said gasoline excise tax acts in the purchase price of sales made to the United States and has not since said date paid to the State of Alabama any of said taxes imposed under said acts on account of withdrawals from storage or sales and deliveries of gasoline to the United States.

The United States through its departments or agencies is from time to time requesting plaintiff to sell and to offer to sell to it gasoline to be withdrawn from storage in Alabama and to be sold and delivered to it in various places in Alabama. Plaintiff is informed and believes and therefore avers that it is impracticable, if not impossible, for the United States to carry on and transact many of its necessary and important governmental functions in Alabama without having gasoline withdrawn from storage in the state and sold and delivered to it at various places therein. Plaintiff withdraws from storage and sells to the United States and intends to continue to offer to sell and to sell to the United States if it offers are accepted gasoline of

the kind and quality desired by the United States, but is unable to sell and deliver said gasoline to the United States without first withdrawing it from storage. Plaintiff is informed and believes and therefore avers that the United States, through its departments and agencies in Alabama, is now making and will continue to make requests that plaintiff and other persons engaged in the business of selling or distributing gasoline in Alabama make bids or offers to sell to it gasoline which will be withdrawn from storage in Alabama and sold and delivered to it in Alabama. Plaintiff is informed and believes and therefore avers that the defendant Albert Carmichael, as Attorney General of Ala- [fol. 10] bama, and the other defendants, as members of the State Tax Commission of Alabama will in addition to the claims and demands already addressed to plaintiff, continue to make claims and demands for the excise taxes, interest and penalties on the withdrawals from storage, sale and delivery of the gasoline which it will sell in Alabama to the United States in the future. Plaintiff is informed and believes and therefore avers that the amount of the claims for such excise taxes on future transactions by plaintiff with the United States will exceed $3,000.00.

Plaintiff avers that if it is required to pay the said excise taxes on all gasoline withdrawn from storage in Alabama for the purpose of making sales to the United States, it will add to the price at which plaintiff will sell and offer to sell gasoline to the United States the amount of such taxes, and it is informed and believes and therefore avers that all other parties withdrawing from storage gasoline for the purpose of selling same to the United States will also add to their price for such commodity the excise tax imposed by said gasoline excise tax acts, if such tax is legally due on such transactions.

Plaintiff avers that the necessary and inevitable operation of the said statute imposing taxes on withdrawals from storage of gasoline for the purpose of completing the sales to the United States as construed by the defendants as officials of the State of Alabama places a direct tax burden on the United States and will directly retard, impede, and *and* burden the execution by the United States of its constitutional powers to carry on its governmental functions in the State of Alabama.

Ninth. Section 11 of the gasoline excise tax act set out in paragraph hereof imposes a penalty equivalent to twenty-five per cent of the amount of the taxes imposed under that act where payments are not made as required by the provisions of said act. Said Section 11 is as follows:

"If distributor, storer, or retail dealer, in gasoline covered by this act shall fail to make the monthly return and to pay the tax prescribed, as provided by this act, the tax shall be deemed delinquent within the meaning of this act, and there shall be added to the amount of the tax a penalty of twenty-five per cent. If in the opinion of the State Tax Commission a good and sufficient cause and reason is shown for such delinquency the State Tax Commission may remit the penalty, otherwise the penalty shall be paid. The State Tax Commission shall be authorized and empowered to make return for the delinquent tax-payer upon such information as it may reasonably obtain, and add thereto the penalty as provided in this section of this act. The State Tax Commission [illegible] as soon as is practicable, and before the 30th day of the month, certify to the State Auditor and the State Treasurer names of all persons liable to pay the tax herein provided together with the post office address and the amount of the tax, and if any such tax and penalties shall not have been paid, the chairman of the State Tax Commission shall issue executions for the collection of such tax directed to any sheriff of the State of Alabama, who shall proceed to collect the same in the manner now provided by law for the collection of delinquent tax by the county tax collectors and make returns of such executions to the State Tax Commission. The tax and all penalties herein provided for shall be held as a debt payable to the State of Alabama by the person against whom the same shall be charged and all such penalties and assessments shall be a lien upon the property in this State of the party charged therewith."

Similar or substantially similar provisions are contained in the other acts imposing the additional gallonage taxes now in effect.

The act approved July 10, 1935, copy of which is attached hereto as Exhibit E, which goes into effect October 1, 1935, in which all of the levies are consolidated, contains similar [fol. 11] penalty provisions for the failure to pay all taxes imposed under the act before they are delinquent.

Under the provisions of an act of the Alabama Legislature approved October 5, 1932 (General Acts of Alabama of 1932, p. 57) each person before engaging in the business of selling, distributing or withdrawing from storage gasoline or other motor fuels in Alabama must procure a license from the State Tax Commission to carry on such business. Section 6 of said act provides that if any such distributor fails to pay all the taxes imposed upon him for engaging in the business of selling, distributing and withdrawing from storage of gasoline, the State Tax Commission may revoke his license upon ten days' written notice to him. Section 7 provides that any person engaging in the business of selling, distributing or withdrawing from storage gasoline without having a license therefor from the State Tax Commission is subject to criminal prosecution and to other penalties. Said Sections 6 and 7 of said act are as follows:

"Section 6. Issuance of License and Power to Revoke Same; Non-Transferability of License.—Upon approval of the bond required as hereinbefore provided, the State Tax Commission shall issue a license authorizing the distributor to engage in the business of selling, distributing and withdrawing from storage, gasoline, but said license may be revoked by the State Tax Commission at any time upon ten days' written notice to the distributor if the distributor shall fail to comply with any of the provisions of this Act, or to pay within the time required by law all excise taxes and penalties required to be paid by such distributor. The license herein authorized to be issued shall be a personal privilege, and shall not be transferable.

"Section 7. Penalties.—Any person who shall engage in the business, for which a license is herein provided, without having a license as herein required, shall forfeit all right to sell, distribute, or withdraw from storage, gasoline in the State of Alabama for a period of one year. Each person engaging in the business of selling, distributing or withdrawing from storage gasoline without first obtaining and having a license therefor as herein required shall be guilty of a misdemeanor, and upon conviction, be fined not less than two hundred fifty or more than five hundred dollars, or imprisoned for a term of not less than thirty or more than one hundred eighty days, or both, at the discretion of the Court."

Tenth. Plaintiff is advised by its counsel and believes and therefore avers that the said gasoline excise tax acts are unconstitutional, void, discriminatory and offensive and repugnant to the provisions of the Constitution of the United States of America in the following several respects and for the following several reasons:

(a) The excise tax of six cents per gallon measured by all gasoline and other liquid motor fuels sold by plaintiff to the United States in the State of Alabama is a tax on the United States contrary to the Constitution of the United States.

(b) The excise tax of six cents per gallon measured by all gasoline and other liquid motor fuels withdrawn from storage in the State of Alabama for the purpose of selling to the United States is a tax on the United States contrary to the Constituion of the United States.

(c) The excise tax of six cents per gallon imposed on exercise of the privilege by plaintiff of selling or withdrawing from storage for the purpose of selling gasoline or other liquid motor fuels to the United States is a direct tax on the United States contrary to the Constitution of the United States.

(d) The excise tax of six cents per gallon measured by all gasoline and other liquid motor fuels sold to the United States in the State of Alabama is a tax on the United States, the necessary operation of which is directly to retard, impede and burden the execution by the United States of its [fol. 12] constitutional powers to transact or perform its governmental functions in the State of Alabama, and said tax is therefor contrary to the Constitution of the United States.

(e) The excise tax imposed by said acts on all gasoline and other liquid motor fuels withdrawn from storage and sold by plaintiff to the United States is in violation of the right guaranteed to plaintiff by the Constitution of the United States to engage in such transactions without liability for the payment of said tax.

(f) The excise tax of six cents per gallon measured by all gasoline and other liquid motor fuels withdrawn from storage by plaintiff for sale in the State of Alabama to the United States is violative of the rights of plaintiff and of

the United States guaranteed to them under the Constitution of the United States.

(g) The excise tax of six cents per gallon on gasoline and other liquid motor fuels imposed on plaintiff on account of withdrawals from storage of such commodities for sales of same by plaintiff to the United States deprives plaintiff of its property without due process of law, contrary to Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(h) The excise tax imposed by said acts on plaintiff on account of sales of gasoline and other liquid motor fuels made by plaintiff in the State of Alabama to the United States deprives plaintiff of its property without due process of law in contravention of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Eleventh. Plaintiff has no adequate remedy at law for redress of the wrongs and grievances herein complained of, and unless the defendants herein are restrained in the enforcement and execution of said gasoline excise tax acts in so far as they tax sales of gasoline and other liquid motor fuels by plaintiff to the United States or tax the withdrawal from storage of gasoline or other liquid motor fuels by plaintiff for the purpose of selling same to the United States, plaintiff will suffer immediate, continuing and irreparable injury, loss and damage, in that:

(a) Plaintiff will be subjected to the penalties aforesaid provided by said acts in the sum of twenty-five per cent of the amount of the tax imposed on all transactions involving the sale and delivery of gasoline and other liquid motor fuels made by plaintiff to the United States in the State of Alabama unless plaintiff complies with the provisions of said acts requiring the payment of said taxes on account of said transactions.

(b) Unless plaintiff pays all the taxes imposed by said gasoline excise tax acts on account of all sales and deliveries of gasoline and other liquid motor fuels by it in Alabama to the United States, the amount of such tax and the penalties thereon will be a lien against all the property of plaintiff in Alabama, superior to all other liens except tax liens to the State antecedent in date.

(c) Unless plaintiff makes monthly reports to the State Tax Commission of all of its sales and deliveries of gasoline and other liquid motor fuels in Alabama to the United States as required by the provisions of said gasoline excise tax acts, it will be subjected to the criminal prosecutions and fines or penalties imposed by said acts.

(d) Upon the plaintiff's failure to pay all of the taxes imposed by said gasoline excise tax acts on sales and deliveries of gasoline and other liquid motor fuels made by it in the State of Alabama to the United States it is subjected to the revocation by the State Tax Commission of its license to sell, distribute or withdraw from storage gasoline and other petroleum products in the state, and if such action is taken by said Commission, it will result in immense and irreparable damage to plaintiff.

[fol. 13] (e) Plaintiff has no adequate remedy either at law or in equity for the recovery of the illegal taxes demanded by the defendants if it pay same as demanded by said defendants.

(f) Plaintiff has no adequate remedy if it pays such illegal taxes demanded by the defendants in that there is no provision for the payment of interest on a refund of taxes paid to the State Tax Commission under mistake of law or fact or where the taxes are illegally demanded and collected by the State Tax Commission.

(g) If the plaintiff pays the illegal taxes claimed and demanded by the defendants, it will have to institute a multiplicity of suits for the recovery of same, as plaintiff is required by said gasoline excise tax acts to make payments of the taxes on the 20th day of each month following the month in which it made sales and deliveries of gasoline in the State of Alabama to the United States.

(h) If plaintiff pays the illegal taxes demanded by the defendants it will have to institute suits against each of the sixty-seven counties in the State of Alabama for the recovery of that portion of the illegal taxes collected by the State Tax Commission and distributed to such counties, as the statutes of Alabama provide that a distribution of one-half the amount of such taxes collected must on the 10th day of each month following the month of collection be distributed to said counties, and the only remedy available to plaintiff

for the recovery of said illegal taxes so paid and distributed to said counties is to institute a separate suit each month against each county for the recovery of that portion of said taxes paid to it, which will result in a great multiplicity of suits and will entail great expense and irreparable loss to the plaintiff.

(i) The right of plaintiff to recover any of said illegal taxes if paid by plaintiff to the State Tax Commission is very doubtful.

Wherefore, plaintiff prays that your honorable Court will make parties defendant herein the defendants hereinabove named and cause subpœnas to issue from this honorable Court to each and every, the defendants, requiring them to appear and answer to this bill in equity within such time as may be fixed by your honorable Court, and that the judge of this Court call to his assistance to hear and determine the application *to* plaintiff for an interlocutory injunction in the premises two other judges as required by the laws of the United States in such cases and set down the hearing hereof at such day as may be fixed by your honorable Court upon five days' notice of such hearing to the defendants and to the Honorable Bibb Graves, Governor of the State of Alabama, as provided by the statutes of the United States in such cases made and provided, and that upon such hearing this Court will grant an interlocutory injunction suspending and restraining the enforcement, operation or execution of said gasoline excise tax acts by restraining the action of the defendants and each of them from the enforcement or execution of said acts in so far as said acts levy or impose excise taxes on plaintiff for selling gasoline or other liquid motor fuels in the State of Alabama to the United States or for withdrawing from storage in Alabama such commodities for the purpose of selling same to the United States, and that upon the final hearing of this cause a permanent injunction of like effect be issued and granted against said defendants, and that plaintiff have such other and further relief in the premises as to this Court may seem just.

John S. Coleman, Solicitor for Plaintiff. Bradley, Baldwin, All & White, of Counsel.

[fol. 14] *Duly sworn to by F. L. Tosch. Jurat omitted in printing.*

[fol. 15] EXHIBIT "A" TO BILL OF COMPLAINT

Be it Enacted by the Legislature of Alabama, That:

Section 1. As used in this Act, the term gasoline shall include gasoline, naphtha and other liquid motor fuels or any devices or substitutes therefor, commonly used in internal combustion engines; provided however that nothing contained in this Act shall be held to apply to these products known commercially as "kerosene oil", "fuel oil" or "crude oil" used for lighting or heating purposes. The word person means and includes persons, corporations, copartnerships, companies, agencies or associations, singular or plural. The term distributor shall include any person who engages in the selling of gasoline in this State by wholesale domestic trade, but shall not apply to any transaction by such distributor in interstate commerce. The term retail dealer shall include any person herein defined as distributor who is also engaged in the selling of gasoline in this State at any place in this State in broken quantities. The term storer as herein used shall include any person who ships gasoline into this State in tank quantities and stores the same and withdraws or uses the same for any purpose.

Section 2. Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the selling, distributing or withdrawing from storage for any use gasoline as herein defined in this State, provided however that this excise tax shall not be levied upon the sale of gasoline in interstate commerce, and provided further that where the excise tax of two cents per gallon upon the sale of such gasoline shall have been paid by a distributor or by a retail dealer or storer such payment shall be sufficient, the intention being that the tax shall not be paid but once.

Section 3. The excise tax imposed by section two hereof shall apply to persons, firms, corporations, dealers or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage, whether such withdrawals be for sales or other use; provided, that "sellers" of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and storers

and distributors shall compute and pay this tax on the basis of their withdrawals or distributions.

Section 4. On or before the 20th day of each month after this Act shall have taken effect, every person upon whom this excise tax is levied shall render to the State Tax Commission on forms prescribed by such Commission a true and correct statement of all sales and withdrawals of gasoline made by him or them during the next preceding month, liable for the payment of the excise tax herein prescribed, and shall furnish to said Commission such additional information as such Commission may require upon blanks to be formulated and furnished by said Commission, and at the time of making such report shall pay to the State Tax Commission an amount of money equal to the excise tax herein laid.

Section 5. The statement herein required to be made by the distributor, storer or retail dealer shall be sworn to before some officer authorized to administer oaths and any false or fraudulent statement sworn to shall constitute perjury and upon conviction thereof the person so convicted shall be punished as provided by Section 5161 of the Code of Alabama.

Section 6. All distributors, storers, or retail dealers shall keep, for not less than two years, within the State of Alabama at some certain place or office such books, documents or papers as will clearly show the amount of sales or withdrawals of gasoline made in this State covered by this Act.

[fol. 16] Section 7. Within 30 days after the passage of this Act, every distributor, storer or retail dealer engaged in the sale or withdrawal of gasoline shall make a report on blanks furnished by the State Tax Commission showing the place and post office address at which he is engaged in the business of distributor or storer or retail dealer in gasoline, which information shall be entered by the State Tax Commission on a book kept for that purpose, and should such distributor, storer or retail dealer move his place of business from one post office address to another, such distributor, storer, or retail dealer shall within 30 days thereafter notify the State Tax Commission of such removal, giving the former place and post office address and

also the place and post office address to which the business has been removed. After this Act becomes effective no person shall become a distributor, storer or seller of gasoline in this State until he shall have made such report to the State Tax Commission.

Section 8. If any distributor, storer or retail dealer in gasoline in this State covered by the provisions in this Act shall fail to make the reports or any of them, to the State Tax Commission as herein required or shall fail to keep the records required by Section 6 hereof, such distributor, storer or retail dealer shall be guilty of a misdeameanor and upon conviction thereof shall be fined not less than $50.00 nor more than $300.00 for each of such offense.

Section 9. It shall be the duty of the State Tax Commission to enforce the provisions of this Act and the State Tax Commission shall have the right itself or by any of its members or its agents to examine the books, reports and accounts of every such distributor, storer or retail dealer of gasoline covered in this Act.

Section 10. The proceeds of the excise tax levied by this Act shall when collected, be paid into the State Treasury, to the credit of the Public Road and Bridge Fund. All funds so raised shall be primarily charged with the payment of the interest upon such additional highway and bridge bonds, when the same shall have been authorized and sold, and to provide a sinking fund, which shall be sufficient to retire such bonds within a period of thirty-one years. Any of said funds not used and expended for said primary obligations may be used by the State Highway Commission, with the approval of the Governor, in constructing public roads and bridges within the State, as now or hereafter provided by law, and in maintaining the public roads and bridges which have been or may hereafter be constructed by the State Highway Commission, in equipping and preparing convicts for use upon the public roads and bridges of the State, for the maintenance of such convicts while so at work upon such roads and bridges, for compensating the State for the use of such convicts, and for such other use upon the public roads and bridges of the State as may be authorized by the State Commission, with the approval of the Governor. Provided, however, that no

part of said fund shall be expended except in accordance with the law as it now exists or may hereafter be enacted.

Section 11. The acceptance of any money paid for the excise tax provided for in this Act shall in no way preclude the collection of the money actually due, provided however that the money actually paid shall constitute a credit against the money actually due.

Section 12. The forms for all statements and reports required in the provisions of this Act shall be prescribed and furnished by the State Tax Commission and the cost of the enforcement of this Act shall be paid out of the funds derived from the excise tax herein prescribed upon a warrant of the State Auditor upon a voucher of the Chairman of the State Tax Commission and approved by the Governor.

Section 13. If distributor, storer or retail dealer of gasoline covered by this Act shall fail to make the monthly returns prescribed herein the State Tax Commission shall make a return for such delinquent upon such information as it may reasonably obtain, assess the excise tax thereon, and add a penalty for failure to make such return 25 per cent of the tax due, to the amount as assessed by the Commission.

[fol. 17] Section 14. The State Tax Commission shall, as soon as is practicable, and before the 30th day of the month, certify to the State Auditor and the State Treasurer names of all persons liable to pay the tax herein provided together with the post office address and the amount of the tax, and if any such tax and penalties shall not have been paid, the chairman of the State Tax Commission shall issue executions for the collection of such tax directed to any sheriff of the State of Alabama, who shall proceed to collect the same in the manner now provided by law for the collection of delinquent tax by the county tax collectors and make returns of such executions to the State Tax Commission. The tax and all penalties herein provided for shall be held as a debt payable to the State of Alabama by the person against whom the same shall be charged and all such penalties and assessments shall be a lien upon the property in this State of the party charged therewith.

Section 15. Any distributor, storer or retail dealer who shall violate any of the provisions of this Act may be restrained and the proper prosecution instituted in the name of the State of Alabama by its Attorney General or under his direction by any Circuit Solicitor of the State from distributing, selling or withdrawing from storage any gasoline, the sale or withdrawal of which is taxable under this Act, until such person shall have complied with the provisions of this Act.

Section 16. Should any section of this Act or any part of this Act be declared unconstitutional it shall not invalidate the remaining sections thereof.

Section 17. Nothing in this Act shall be held or construed to in any way repeal or change the excise tax now levied and collected and distributed to the counties as provided in the Act approved February 10th, 1923.

Section 18. This Act shall go into effect immediately upon its passage.

Approved Jan. 25, 1927.

[fol. 18] EXHIBIT "B" TO BILL OF COMPLAINT

Be it enacted by the Legislature of Alabama:

Section 1. That as used in this act, the term "Gasoline" shall include gasoline, naptha and other liquir motor fuels or any devices or substitutes therefor commonly used in internal combustion engines, provided that nothing contained in this act shall apply to those products commercially known as "Kerosene Oil", "Fuel Oil", "Crude Oil" used for lighting or heating purposes. The word "persons" means and includes every person, corporation, copartnership, company, agency or association, singular or plural. The term "distributor" shall include any person who shall engage in the selling of gasoline as herein defined in this State by wholesale in domestic trade, but shall not apply to any transaction by such distributor in interstate commerce. The term "retail dealer" shall include any person herein defined as "distributor" who is also engaged in the sale of gasoline as herein defined, at any place in this State in broken quantities. The term "storer" as herein

used shall include any person who ships gasoline into this State, in tank quantities and stores the same and withdraws or uses the same for any purpose.

Section 2-A. Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of one cent per gallon in addition to all other excise tax- now imposed by law upon the selling, distributing or withdrawing from storage for any use, gasoline as herein defined in this State; said one cent excise tax shall be collected as now provided by law for the collection of gasoline excise tax and when collected, less the expense of collecting, shall be paid into the State Treasury to the credit of the State Highway Department for the purposes set forth in this Act until October 1, 1932, after which time the same when collected shall be paid to the County Treasurer or the depository of the several counties in equal shares for a period of three years to be used exclusively by said counties in constructing and maintenance of public roads and bridges within the several counties. Where the excise tax herein provided shall have been paid by a distributor or retail dealer or storer, such payment shall be sufficient, the intention being that the tax levied by this Act shall not be paid but once. Provided, however, that at the end of three years period provided for herein for said excise tax to be paid to the counties said excise tax shall thereafter be no longer collected. (b) The tax imposed by subdivision (a) of this section shall apply to persons, firms, corporations, dealers or distributors, storing gasoline and distributing same or allowing the same to be withdrawn from storage, whether such withdrawals be for sales or other use—provided that "sellers" of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and storers and distributors shall compute and pay this tax on the basis of their withdrawals or distribution. (c) The excise tax herein levied is levied by the State under its police power and as an aid to policing, supervising, preserving, maintaining, constructing and regulating the use of public roads and bridges in the State of Alabama and maintaining, guarding and supervising state convicts while working upon such roads and bridges and is not a Revenue measure.

Section 3. On or before the twentieth day of each month after this Act shall have taken effect, every person upon

whom this excise tax is levied shall render to the State Tax Commossion on forms prescribed by such Commission, a true and correct statement of all sales and withdrawals of gasoline made by him or them during the next preceding month, liable for the payment of the excise tax herein described, and shall furnish to said Commission such additional information as such Commission may require upon blanks to be formulated and furnished by said Commission and at the time of making such report shall pay to the State Tax Commission an amount of money equal to the excise tax herein laid. The statement herein required to be made by this distributor, storer or retail dealer shall be sworn to before some officer authorized to administer oaths and any false or fraudulent statement sworn to shall constitute perjury and upon conviction thereof the person so convicted shall be punished as provided by law for the crime of perjury.

[fol. 19] Section 4. All distributors, storers, or retail dealers shall keep, for not less than two years, within the State of Alabama at some certain place or office such books, documents or papers as will clearly show the amount of sales or withdrawals of gasoline made in this State covered by this Act.

Section 5. Within thirty days after the effective date of this Act, every distributor, storer or retail dealer engaged in the withdrawal of gasoline who has not theretofore made such report, shall make a report on blanks furnished by the State Tax Commission to the State Tax Commission showing the place and post office address at which he is engaged in the business of distributor or storer or retail dealer in gasoline, which information shall be entered by the State Tax Commission on a book kept for that purpose, and should such distributor, storer, or retail dealer move his place of business from one post office address to another, such distributor, storer or retail dealer shall within thirty days thereaffer notify the State Tax Commission of such removal, giving the former place and post office address and also the place and post office address to which the business has been removed. After this Act becomes effective no person shall become a distributor, storer or seller of gasoline in this State until he shall have made such reports to the State Tax Commission.

Section 6. If any distributor, storer or retail dealer in gasoline in this State covered by the provisions of this Act shall fail to make the reports or any of them, to the State Tax Commission as herein required or shall fail to keep the records required by Section 4 hereof, such distributor, storer or retail dealer shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Fifty Dollars nor more than Three Hundred Dollars for each of such offenses.

Section 7. It shall be the duty of the State Tax Commission to enforce the provisions of this Act and the State Tax Commission shall have the right itself or by any of its agents to examine the books, reports and accounts of every such distributor, storer, or retail dealer of gasoline covered in this Act.

Section 8. The proceeds of the excise tax herein imposed by this Act, less the actual cost of the collection of the same, shall, when collected, be paid into the State Treasury to the credit of the Public Road and Bridge Fund to be used by the State Highway Commission, with the approval of the Governor, for the purpose of supervising and maintaining such public roads and bridges as may now be constructed in the State and to hereafter construct, supervise and maintain public roads and bridges under authority and supervision of the State Highway Commission as provided by law; and for the purpose of maintaining and supervising State convicts while working upon such roads and bridges until October 1, 1932, and from thereafter divided equally among the sixty-seven counties of the State; payment to be made to the County Treasurer or depository of said Counties on the tenth day of each month of the year, and said funds shall be used by the several counties of the State exclusively for the construction and maintenance and policing of the public roads in the respective counties. The tax herein imposed shall cease and become inoperative on the first day of October, 1935.

Section 9. The acceptance of any money paid for the excise tax provided for in this Act shall in no way preclude the collection of the money actually due, provided, however, that the money actually paid shall constitute a credit against the money actually due.

Section 10. The forms for all statements and reports required in the provisions of this Act shall be prescribed and furnished by the State Tax Commission and the cost of the enforcement of this Act shall be paid out of the funds derived from the excise tax herein prescribed upon a warrant of the State Auditor upon a voucher of the Chairman of the State Tax Commission and approved by the Governor.

[fol. 20] Section 11. If any distributor, storer or retail dealer, in gasoline covered by this Act shall fail to make the monthly returns prescribed herein, the State Tax Commission shall make a return for such delinquent upon such information as it may reasonably obtain, assess the excise tax thereon, and add a penalty for failure to make such return of twenty-five per cent of the tax due to the amount as assessed by the Commission. If in the opinion of the State Tax Commission a good and sufficient cause and reason is shown for such delinquency, the State Tax Commission may remit the penalty, otherwise the penalty shall be paid. The State Tax Commission shall be authorized and empowered to make return for the delinquent taxpayer upon such information as it may reasonably obtain and add thereto the penalty as provided in this section of this Act. The State Tax Commission shall as soon as practicable, and before the thirtieth day of the month, certify to the State Auditor and the State Treasurer names of all persons liable to pay the tax herein provided, together with the post office address and the amount of the tax and if any such tax and penalties shall not have been paid, the State Tax Commission shall issue executions for the collection of such tax directed to any sheriff of the State of Alabama, who shall proceed to collect the same in the manner now provided by law for the collection of delinquent tax by the county tax collector and make returns of such executions to the State Tax Commission. The tax and all penalties herein provided for shall be held as a debt payable to the State of Alabama by the person against whom the same shall be charged and all such penalties and assessment shall be a lien upon the property in this State of the party charged therewith.

Section 12. Any distributor, storer, or retail dealer, who shall violate any of the provisions of this Act may be restrained and the proper prosecutions instituted in the name of the State of Alabama by its Attorney General or under his direction, by any circuit solicitor of the State, from dis-

tributing, selling or withdrawing from storage any gasoline, the sale of the withdrawal of which is taxable under this Act, until such person shall have complied with the provisions of this Act.

Section 13. Each freight agent of the Railroad or other transportation companies operating in the State af Alabama shall report to the State Tax Commission on the first day of October, January, April and July of each year, all shipments of gasoline or substitutes therefor received at such station on such railroads, or through any other transportation companies, during the preceding three months, giving the name and address of the consignor and consignee shipping and receiving such gasoline or substitutes therefor and the number of gallons or pounds contained in each and every shipment.

Section 14. Nothing in this Act shall be held or construed to in any way repeal or change the excise tax now levied and collected on gasoline under any general or local law heretofore adopted.

Section 14-A. That in the event an amendment to the Constitution authorizing the issue of new or additional bonds for the construction of public roads and highways be ratified, then, in that event a sufficient amount of the tax herein levied and collected shall be applied to the payment of interest on said bonds and to create and provide a sinking fund to pay said bonds.

Section 15. This act with all its provisions shall go into effect immediately upon its passage and approval by the Governor and should any section of this Act, or any provision hereof be declared unconstitutional, it shall not invalidate the remaining sections or parts thereof.

Approved July 27, 1931.

[fol. 21] EXHIBIT "C" TO BILL OF COMPLAINT

Be it Enacted by the Legislature of Alabama:

Section 1. As used in this Act, the term "gasoline" shall include gasoline, naptha and other liquid motor fuels or any devices or substitutes therefor, commonly used in internal

combust-on engines; provided, however, that nothing contained in this Act shall be held to apply to those products known commercially as "kerosene oil", "fuel oil," or "crude oil" used for lighting or heating purposes. The word "person" means and includes persons, corporations, co-partnerships, companies, agencies or associations, singular or plural. The term "distributor" shall include any person who engages in the selling of gasoline in this State by wholesale domestic trade, but shall not apply to any transaction by such distributor in interstate commerce. The word "refiner" shall include any person who manufactures, distills, blends, compounds or mixes any one or more products in the production of a liquid motor fuel as herein defined. The term "retail dealer" shall include any person herein defined as distributor who is also engaged in the selling of gasoline in this State at any place in this State in broken quantities. The term "storer" as herein used shall include any person who ships, or causes to be shipped, gasoline into this State in tank or drum quantities and stores the same and withdraws or uses the same for any purpose.

Section 2. Every distributor, refiner, retail dealer or storer of gasoline as herein defined shall pay an excise tax of one cent (1¢) per gallon upon the selling, distributing, or withdrawing from storage for any use gasoline as herein defined in this State, provided however that this excise tax shall not be levied upon the sale of gasoline in interstate commerce, and provided further that where the excise tax of one cent (1¢) per gallon upon the sale of such gasoline shall have been paid by the distributor, refiner, or by retail dealer or storer such payment shall be sufficient, the intention being that the tax shall be paid but once.

Section 3. The excise tax imposed by Section 2 hereof shall apply to persons, firms, corporations, dealers, refiners or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage whether such withdrawals be for sale or other use; provided, that "sellers" of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and refiners, storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions.

Section 4. On or before the twentieth day of each month after this act shall have taken effect, every person upon whom this excise tax is levied shall render to the State Tax Commission on forms prescribed by such Commission a true and correct statement of all sales and withdrawals of gasoline made by him or them during the next preceding month, liable for the excise tax herein prescribed, and shall furnish the said Commission such additional information as such Commission may require upon blanks to be formulated and furnished by said Commission, and at the time of making such report shall pay to the State Tax Commission an amount of money equal to the excise herein laid.

Section 5. The statement herein required to be made by the distributor, refiner, storer or retail dealer shall be sworn to before some officer authorized to administer oaths and [fol. 22] any false or fraudulent statement sworn to shall constitute perjury and upon conviction thereof the person so convicted shall be punished as provided by Section 5161 of the Code of Alabama.

Section 6. All distributors, refiners, storers or retail dealers shall keep, for not less than two years, within the State of Alabama at some certain place or office such books, documents or papers as will clearly show the amount of sale or withdrawal of gasoline made in this State covered by this Act.

Section 7. Within thirty (30) days after the passage of this Act every distributor, refiner, storer, or retail dealer engaged in the sale of gasoline, or withdrawal from storage or distribution of gasoline, shall make a report on blanks furnished by the State Tax Commission to the State Tax Commission showing the place and post office address at which he is engaged in the business of distributing, refining, selling at retail, or withdrawing from storage gasoline, which information shall be entered by the State Tax Commission on a book kept for that purpose. After this Act becomes effective, no person shall engage in selling as a distributor or retail dealer, refining or withdrawing from storage, any gasoline covered by the provision of this Act in this State until he shall have made such report to the State Tax Commission.

Section 8. If any distributor, refiner, storer or retail dealer in gasoline in this State covered by the provisions of this Act shall fail to make the reports or any of them, to the State Tax Commission as herein required, or shall fail to keep the records required by Section 6 hereof, such distributor, refiner, storer or retail dealer shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $50.00 nor more than $300.00 for such offence.

Section 9. It shall be the duty of the State Tax Commission to enforce the provisions of this Act and the State Tax Commission shall have the right itself or by any of its members or its agents to examine the books, records and accounts of every such distributor, refiner, storer or retail dealer in gasoline covered by the provisions of this Act. The State Tax Commission shall have the right itself or its agents to examine the records, accounts, book and invoices of any retail dealer who makes purchases from an Alabama distributor, refiner, storer or other retail dealer on a basis of "tax paid"; when, in the opinion of the Commission, such examination is necessary to determine if such gasoline sold in this State has been reported to the gasoline tax department of the State Tax Commission and the tax thereon paid. Any dealer making purchases on the basis of "tax paid" who fails to keep the records as herein required, or refuses to permit the duly authorized agent of the State Tax Commission to examine such records shall be guilty of a misdemeanor and upon conviction thereof, shall be finer not less than fifty dollars ($50.00) nor more than three hundred dollars ($300.00) for each such offence.

Section 10. Subject to the provisions of Section 16½ of this Act the proceeds of the excise tax herein imposed by this Act, less the actual cost of the collection of same, shall, when collected be paid into the State Treasury to the credit of the Public Road and Bridge Fund to be used by the State Highway Commission, with the approval of the Governor, for the purpose of policing, supervising and maintaining such public roads and bridges as may now be constructed in the State and to hereafter, police, construct, supervise and maintain public roads and bridges under authority and supervision of the State Highway Commission, as provided by law.

Section 11. The acceptance of any money paid for the excise tax provided for in this Act shall in no way preclude the collection of the money actually due, provided however that the money actually paid shall constitute a credit against the money actually due.

Section 12. The forms for all statements and reports required under the provisions of this Act shall be prescribed and furnished by the State Tax Commission and the cost of the enforcement of this Act shall be paid out of the funds derived from the excise tax herein prescribed, upon a warrant of the State Comptroller upon a voucher of the Chairman of the Tax Commission, or the State Tax Commissioner and approved by the Governor.

[fol. 23] Section 13. If any distributor, refiner, storer or retail dealer in gasoline covered by this Act shall fail to make the monthly returns prescribed herein and pay the excise tax hereby laid, on or before the 20th day of the month following sale, distribution or withdrawal, the State Tax Commission shall make return for such delinquent upon such information as it may reasonably obtain, assess the excise tax thereon, and add a penalty for failure to make such return and pay the tax herein laid of twenty-five percent (25%) of the tax due, to the amount as assessed by the Commission. If, in the opinion of the State Tax Commission, a good and sufficient cause or reason is shown for such delinquency, the State Tax Commission may remit the penalty, otherwise the penalty shall be paid.

Section 14. Within five (5) days after the State Tax Commission shall adjudge a distributor, refiner, storer or retail dealer in gasoline delinquent, such delinquent shall be notified by the State Tax Commission, by registered mail, to appear before the State Tax Commission and show cause, if any, why execution should not issue against the bond and property of such delinquent to satisfy the amount of tax and penalties due the State. If no showing is made within ten (10) days after notice is mailed, or if such showing is not satisfactory to the State Tax Commission, execution shall be issued by the State Tax Commission for the collection of such tax and penalties, directed to any Sheriff of the State of Alabama, who shall proceed to collect the same in the manner now provided

by law for the collection of delinquent tax by the County Tax Collectors and make return of such executions to the State Tax Commission. The tax and all penalties herein provided for shall be held as a debt payable to the State of Alabama by the person against whom the same shall be charged and all such tax and penalties shall be a superior lien against all the property in this State of the person charged therewith. In the enforcement of collection of delinquent taxes and penalties under the provisions of this Section the Sheriff shall first proceed against the bond of such delinquent and if such bond is insufficient to cover the tax and penalties, then the Sheriff shall proceed against the property of such delinquent.

Section 15. Any distributor, refiner, storer or retail dealer who shall violate any of the provisions of this Act may be restrained and the proper prosecution instituted in the name of the State of Alabama by its Attorney General or under his direction by any Circuit Solicitor of the State, or an attorney employed by the State Tax Commission with the approval of the Governor from distributing, refining, selling or withdrawing from storage any gasoline, the sale or withdrawal of which is taxable under this Act, until such person shall have complied with the provisions of this Act.

Section 16. All other State excise and inspection taxes on the sale of gasoline imposed before the passage of this Act shall remain in full force and effect.

Section 16½. In the event a Court of Competent Jurisdiction shall, for any reason, hold invalid that provision in Act No. 743 being 'An Act to impose, for the use and purpose of supervising, preserving, maintaining, constructing and regulating the use of public roads and bridges in the State of Alabama, and to maintain and supervise State convicts working upon such roads and bridges, an excise tax on all persons, companies, agencies, corporations and associations who sell, distribute, store or draw from storage for any purpose whatsoever, gasoline or any other liquid motor fuels or devices or any substitutes therefor within the State of Alabama; providing for the collection of such excise tax and the payment of same into the State Treasury to the credit of the State Highway Department for the Public Road and Bridge

Fund; providing for the enforcement of this Act and fixing a penalty for the violation of the provisions hereof; providing that the said excise tax so imposed shall be in addition to all other excise tax now imposed by law; and providing that freight agents of Railroads and all agents of all transportation companies operating within the State [fol. 24] of Alabama and who transport motor fuels, shall report to the State Tax Commission all shipments of gasoline or any substitutes therefor, received at any of their Stations within the State,' approved July 27, 1931, providing that the gasoline tax levied in said Act be equally distributed between each of the several counties of the State after October 1, 1932; then and in that event the tax herein levied or imposed shall be, less the actual cost of collecting the same, thereafter divided equally among the sixty-seven counties of the State monthly ac collected, and said funds shall be used by the several counties of the State exclusively for the construction, maintenance, supervision and policing of the public roads in the respective counties.

Section 17. Should any part of this Act be declared unconstitutional it shall not invalidate the remainder thereof.

Section 18. This Act shall take effect on its passage and approval by the Governor.

Approved November 5, 1932.

[fol. 25] EXHIBIT "D" TO BILL OF COMPLAINT

Be it Enacted by the Legislature of Alabama:

Section 1. As used in this Act, the term "gasoline" shall include gasoline, naptha and other liquid motor fuels or any devices or substitutes therefor, commonly used in internal combustion engines; provided, however, that nothing contained in this Act shall be held to apply to those products known commercially as "kerosene oil," "fuel oil" or "crude oil" used for lighting or heating purposes. The word "person" means and includes persons, corporations, co-partnerships, companies agencies or associations, singular or plural. The term "distributor" shall include any person who engages in the selling of gasoline in this State

by wholesale domestic trade, but shall not apply to any transaction by such distributor in interstate commerce. The word "refiner" shall include any person who manufactures, distills, blends, compounds or mixes any one or more products in the production of a liquid motor fuel as herein defined. The term "retail dealer" shall include any person herein defined as distributor who is also engaged in the selling of gasoline in this State at any place in this State in broken quantities. The term "storer" as herein used shall include any person who ships or causes to be shipped, gasoline into this State in tank or drum quantities and stores the same and withdraws or uses the same for any purpose.

Section 2. Every distributor, refiner, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents (2¢) per gallon upon the gasoline, distributing, or withdrawing from storage for any use gasoline as herein defined in this State, provided however, that this excise tax shall not be levied upon the sale of gasoline in interstate commerce, and provided further that where the excise tax of two cents (2¢) per gallon upon the sale of such gasoline shall have been paid by the distributor, refiner, or by retail dealer or storer such payment shall be sufficient, the intention being that the tax shall be paid but once.

Section 3. The excise tax imposed by Section 2 hereof shall apply to persons, firms, corporations, dealers, refiners, or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage whether such withdrawals be for sale or other use; provided that "sellers" of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and refiners, storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions.

Section 4. On or before the twentieth day of each month after this act shall have taken effect, every person upon whom this excise tax is levied shall render to the State Tax Commission on forms prescribed by such Commission a true and correct statement of all sales and withdrawals of gasoline made by him or them during the next

preceding month, liable for the excise tax herein prescribed, and shall furnish the said Commission such additional information as such Commission may require upon blanks to be formulated and furnished by said Commission, and at the time of making such report shall pay to the State Tax Commission an amount of money equal to the excise herein laid.

Section 5. The statement herein required to be made by the distributor, refiner, storer or retail dealer shall be sworn to before some officer authorized to administer oaths and any false or fraudulent statement sworn to shall constitute perjury and upon conviction thereof the person so convicted shall be punished as provided by Section 5161, of the Code of Alabama.

Section 6. All distributors, refiners, storers or retail dealers shall keep, for not less than two years, within the State of Alabama at some certain place or office such books, documents or papers as will clearly show the amount of sale or withdrawal of gasoline made in this State covered by this Act.

Section 7. Within thirty (30) days after the passage of this Act every distributor, refiner, storer, or retail dealer engaged in the sale of gasoline or withdrawal from storage or distribution of gasoline, shall make a report on blanks furnished by the State Tax Commission to the State Tax Commission showing the place and post office address at which he is engaged in distributing, refining, selling at retail, or withdrawing from storage gasoline, which information shall be entered by the State Tax Commission on a book kept for that purpose. After this Act becomes effective, no person shall engage in selling as a distributor [fol. 26] or retail dealer, refining or withdrawing from storage any gasoline covered by the provisions of this Act in this State until he shall have made such report to the State Tax Commission.

Section. 8. If any distributor, refiner, storer or retail dealer in gasoline in this State covered by the provisions of this act shall fail to make the reports or any of them, to the State Tax Commission as herein required, or shall fail to keep the records required by Section 6 hereof, such distributor, refiner, storer or retail dealer shall be guilty of a misdemeanor and upon conviction thereof shall be

fined not less than $50.00 nor more than $300.00 for such offense.

Section 9. It shall be the duty of the State Tax Commission to enforce the provisions of this Act and the State Tax Commission shall have the right itself or by any of its members or its agents to examine the books, records and accounts of every such distributor, refiner, storer or retail dealer in gasoline covered by the provisions of this Act. The State Tax Commission shall have the right itself or its agents to examine the records, account, books and invoices of any retail dealer who makes purchases from an Alabama distributor, refiner, storer or other retail dealer on a basis of "tax paid"; when, in the opinion of the Commission, such examination is necessary to determine if such gasoline sold in this State has been reported to the gasoline tax department of the State Tax Commission and the tax thereon paid. Any dealer making purchases on the basis of "tax paid" who fails to keep the records as herein required, or refuses to permit the duly authorized agent of the State Tax Commission to examine such records shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not less than fifty dollars ($50.00) nor more than three hundred dollars ($300.00) for each such offense.

Section 10. Subject to the provisions of Section 17 of this Act the proceeds of the excise tax herein imposed by this Act, less the actual cost of the collection of same, shall, when collected be paid into the State Treasury to the credit of Public Road and Bridge Fund to be used by the State Highway Commission, with the approval of the Governor, for the purpose of policing, supervising and maintaining such public roads and bridges as may now be constructed in the State and to hereafter police, construct, supervise and maintain public roads and bridges under authority and supervision of the State Highway Commission, as provided by law.

Section 11. The acceptance of any money paid for the excise tax provided for in this Act shall in no way preclude the collection of the money actually due, provided however, that the money actually paid shall constitute credit against the money actually due.

Section 12. The forms for all statements and reports required under the provisions of this Act shall be prescribed and furnished by the State Tax Commission and the cost of the enforcement of this Act shall be paid out of the funds derived from the excise tax herein prescribed, upon a warrant of the State Comptroller upon a voucher of the Chairman of the Tax Commission, or the State Tax Commissioner and approved by the Governor.

Section 13. If any distributor, refiner, storer or retail dealer in gasoline covered by this Act shall fail to make the monthly returns prescribed herein and pay the excise tax hereby laid, on or before the 20th day of the month following sale, distribution or withdrawal, the State Tax Commission shall make return for such delinquent upon such information as it may reasonably obtain, assess the excise tax thereon, and add a penalty for failure to make such return and pay the tax herein laid of twenty-five per cent (25%) of the tax due, to the amount as assessed by the Commission. If, in the opinion of the State Tax Commission, a good and sufficient cause or reason is shown for such delinquency, the State Tax Commission may remit the penalty, otherwise the penalty shall be paid.

[fol. 27] Section 14. Within five (5) days after the State Tax Commission shall adjudge a distributor, refiner, storer or retail dealer in gasoline delinquent, such delinquent shall be notified by the State Tax Commission, by registered mail, to appear before the State Tax Commission and show cause, if any, why execution should not issue against the bond and property of such delinquent to satisfy the amount of tax and penalties due the State. If no showing is made within ten (10) days after notice is mailed, or if such showing is not satisfactory to the State Tax Commission, execution shall be issued by the State Tax Commission for the collection of such tax and penalties, directed to any Sheriff of the State of Alabama, who shall proceed to collect same in the manner now provided by law for the collection of delinquent tax by the County Tax Collectors and make return of such executions to the State Tax Commission. The tax and all penalties herein provided for shall be held as a debt payable to the State of Alabama by the person against whom the same shall be charged and all such tax and penalties shall

be a superior lien against all the property in this State of the person charged therewith. In the enforcement of collection of delinquent taxes and penalties under the provisions of this State the Sheriff shall first proceed against the bond of such delinquent and if such bond is insufficient to cover the tax and penalties, then the Sheriff shall proceed against the property of such delinquent.

Section 15. Any distributor, refiner, storer or retail dealer who shall violate any of the provisions of this Act may be restrained and the proper prosecution instituted in the name of the State of Alabama by its Attorney General or under his direction by any Circuit Solicitor of the State, or an attorney employed by the State Tax Commission with the approval of the Governor from distributing, refining, selling or withdrawing from storage any gasoline, the sale or withdrawal of which is taxable under this Act, until such person shall have complied with the provisions of this Act.

Section 16. All other State excise and inspection taxes on the sale of gasoline imposed before the passage of this Act, except those expressly repealed herein, shall remain in full force and effect.

Section 17. That the proceeds from one cent of the tax herein levied shall be equally divided among the sixty-seven counties of the State of Alabama monthly as collected, less the actual cost of collecting the same, payment to be made to the County Treasurer or Depository of said counties on the 10th, day of each month of the year; and said funds shall be used by the several counties of the State exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties; provided, however, that the Board of Revenue or other such governing body of a county may, at any time within twelve months from the passage of this Act, use at their option, subject to the approval of the Governor of the State of Alabama, and of such proceeds as collected for the purpose of matching any United States Government funds on any fair and reasonable basis that may be expended in said county.

Section 18. That the proceeds from one cent of said tax herein levied may be used by the Governor of the State of Alabama at any time within twelve months from the

approval of this Act for the purpose of matching any United States Government funds on any fair and reasonable basis.

Section 19. That the levy of the one cent tax as provided and levied under the provisions of an act entitled "An Act to impose, for the use and purpose of supervising, preserving, maintaining, constructing and regulating the use of public roads, and bridges in the State of Alabama, and [fol. 28] to maintain and supervise State Convicts while working upon such roads and bridges, an excise tax on all persons, companies, agencies, corporations and associations, who sell, distribute, store or draw from storage for any purpose whatsoever, gasoline or any other liquid motor fuels or devices or any substitutes therefor within the State of Alabama; providing for the collection of such excise tax and the payment of same into the State Treasury to the credit of the State Highway Department for the public road and bridge fund; providing for the enforcement of this Act and fixing a penalty for the violation of the provisions hereof; providing that the said excise tax so imposed shall be in addition to all other excise tax now imposed by law; and providing that freight agents of railroads and all agents of all transportation companies operating within the State of Alabama and who transport motor fuels, shall report to the State Tax Commission all shipments of gasoline or any substitutes therefor, received at any of their stations within the State. Approved July 27, 1931, "be and the same is hereby suspended as of and on February 1, 1935, and all other provisions of said act shall remain and be in full force and effect until the full payment of the amount due thereunder is paid in full and thereafter said act is hereby repealed. That the levy of the one cent tax as provided and levied under the provision of an act entitled "An Act to impose an excise tax in addition to any and all other excise taxes now imposed by law on persons, corporation, co-partnerships, companies, agencies or associations engaged in selling, distributing, refining, storing, or withdrawing from storage for any purpose whatsoever gasoline or other liquid motor fuels or devices or substitutes therefor in this state; and providing for the collection and payment of such tax; and for the examination of the books and records of any persons, corporations, co-partnerships, companies, agen-

cies or associations engaged in selling, distributing, refining, storing or withdrawing from storage for any purpose whatsoever gasoline or other liquid motor fuels or devices or substitutes therefor in this state; providing a penalty for any false statements made in making reports to the State Tax Commission; providing for the distribution of the funds derived therefrom, and the use to which such funds may be put; and providing for the enforcement of this act and fixing a penalty for violation of any of the provisions hereof. Approved November 5, 1932," be and the same is hereby suspended as of and on February 1, 1935, and all other provisions of said act shall remain and be in full force and effect until the full payment of the amount due thereunder is paid in full and thereafter said Act is hereby repealed.

Section 20. Shquld any part of this Act be declared unconstitutional it shall not invalidate the remainder thereof.

Section 21. This Act shall take effect on the 31st. day of January, 1935.

Approved January 31, 1935.

[fol. 29] EXHIBIT "E" TO BILL OF COMPLAINT

Schedule 156. As used in this Chapter, the term "Gasoline" shall include gasoline, naptha and other liquid motor fuels or any device or substitute therefor, commonly used in internal combustion engines; provided, however, that nothing in this Chapter shall be held to apply to those products known commercially as "kerosene oil", "fuel oil," or "crude oil" commonly used for lighting, heating or industrial purposes. The word "person" means and includes persons, corporations, copartnerships, companies, counties, municipal corporations, school boards, or agencies of the State, or other agencies, associations, incorporated or otherwise, singular or plural. The term "distributor" shall include any person who engages in the selling of gasoline in this State by wholesale domestic trade, but shall not apply to any transaction of such distributor in interstate commerce. The word "refiner" shall include any person who manufacturers, distills, blends, compounds or mixes any one or more products in

the production of a liquid motor fuel as herein defined. The term "retail dealer" shall include any person herein defined as distributor who is also engaged in the selling of gasoline in this State at any place in this State in broken quantities. The term "storer" as herein used shall include any person who ships or causes to be shipped or receives, gasoline into this State in any quantities, and stores the same in any manner and withdraws or uses the same for any purpose.

Schedule 156.1. Every distributor, refiner, retail dealer or storer of gasoline as herein defined shall pay an excise tax of six cents ($.06) per gallon upon the selling, distributing, storing or withdrawing from storage in this State for any use, gasoline as herein defined, provided, however, that this excise tax shall not be levied on the sale of gasoline in interstate commerce, and provided further, that where the excise tax of six cents ($.06) per gallon upon the sale, distribution, storage or withdrawal from storage of such gasoline shall have been paid by a distributor, refiner, or by retail dealer or storer, such payment shall be sufficient, the intention being that the tax shall be paid but once.

Schedule 156.2. The excise tax imposed by Section 156.1 hereof shall apply to persons as defined in this Chapter, storing gasoline and distributing the same or allowing the same to be withdrawn from storage whether such withdrawals be for sale or other use; provided that "sellers" of gasoline and its substitute paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and refiners, storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions.

Schedule 156.3. On or before the twentieth day of each month after this Chapter shall have taken effect, every person upon whom this excise tax is levied, shall render to the State Tax Commission on forms prescribed by such Commission, a true and correct statement of all sales and withdrawals of gasoline made by him or them during the next preceding calendar month, and shall furnish the said Commission such other information as such Commission may demand and/or require, upon blanks to be formulated and furnished by said Commission, and at the time of making such monthly report shall pay to the State Tax Commission an amount of money equal to the excise tax herein levied.

Schedule 156.4. The monthly statement herein required to be made by the distributor, refiner, storer or retail dealer shall be sworn to before some officer authorized to administer oaths and any false or fraudulent statement sworn to shall constitute perjury and upon conviction thereof, the person so convicted shall be punished as provided by Section 5161 of the Code of 1923.

Schedule 156.5. All distributors, refiners, storers or retail dealers shall keep, for not less than two years, within the State of Alabama at some certain place or office, such books, documents or other papers as will clearly show the amount of sales, distributions or withdrawals of gasoline made in this State covered by this Chapter.

[fol. 30] Schedule 156.6. Within thirty days after the passage of this Chapter, every distributor, refiner, storer or retail dealer engaged in the sale or withdrawal of gasoline shall make a report on blanks furnished by the State Tax Commission to the State Tax Commission showing the place and post office address at which he is engaged in the business of distributor, refiner, or storer or retail dealer in gasoline, which information shall be entered by the State Tax Commission on a book kept for that purpose, and should such distributor, refiner, storer or retail dealer move his place of business and/or his post office address, to another such distributor, refiner, storer or retail dealer shall, without delay and/or within twenty days thereafter, notify the State Tax Commission of such removal, giving the former place and post office address and also the place and post office address to which the business has been removed. After this Chapter becomes effective no person shall become a distributor, refiner, storer or seller of gasoline in this State until he shall have made such reports to the State Tax Commission.

Schedule 156.7. If any distributor, refiner, storer or retail dealer in gasoline in this State, covered by the provisions of this Chapter, shall fail to make the reports or any of them, to the State Tax Commission as herein required, or shall fail to keep the records as herein required, such distributor, refiner, storer or retail dealer shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than Fifty Dollars ($50.00) nor more than Three

Hundred Dollars ($300.00) for such offence. Each month of such failure shall constitute a separate offence.

Schedule 156.8. It shall be the duty of the State Tax Commission to enforce the provision of this Chapter and the State Tax Commission shall have the right by itself or by any of its members or its agents to examine the books, records and accounts of every such distributor, refiner, storer or retail dealer in gasoline covered by the provisions of this Chapter, and any distributor, refiner, storer, or retail dealer who refuses to permit the examination of such records, accounts or books shall be guilty of a misdemeanor and upon conviction fined not less than Fifty Dollars ($50.00) nor more than Three Hundred Dollars ($300.00). The State Tax Commission shall have the right itself, by any of its members, or its agents to examine the records, accounts, books and invoices of any retail dealer or storer who makes purchases of gasoline from an Alabama distributor, refiner, storer or other retail dealer or from any other source on a basis of "tax paid" when, in the opinion of the Commission such examination is necessary to determine if such gasoline sold in this State has been reported to the gasoline tax department of the State Tax Commission and the tax thereon paid. Any dealer or person making purchases on the basis of "tax paid" from any licensed dealer or otherwise, who fails to keep the records as herein required, or refuses to permit the duly authorized agents of the State Tax Commission to examine such records shall be guilty of misdemeanor and upon conviction therefor, shall be fined not less than Fifty Dollars ($50.00) nor more than Three Hundred Dollars ($300.00) for each such offence.

Schedule 156.9. One-third of the proceeds of the excise tax herein imposed, less cost of collection and administering this Chapter, shall be paid into the State Treasury to the credit of the sixty-seven counties of the State, and shall be divided and distributed equally among the sixty-seven counties of this State, payment to be made by State warrant to be mailed to the Treasurer of such counties or depositories of such counties, on or before the 10th day of each month following collection. Such funds when received by the County Treasurer shall be covered into the County road and bridge fund, and shall be expended exclusively in the construction, maintenance and repair of the public roads

and bridges in such County. The use or expenditure of any said funds in any other manner or for any other purpose than as provided herein, but the governing body of any County of any individual member of said body, shall constitute a misdemeanor puishable by fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) and by imprisonment in the County jail or at hard labor for the County for not less than one or more than twelve months. The State Highway Commission shall have the right to inspect the work upon which such funds [fol. 31] are expended, and if in the judgment of the State Highway Commission, it appears that such funds are not being expended profitably or correctly; tne State Highway Commission shall report the matter to the State Comptroller or other office required to examine the records of County Officials. The State Comptroller, or other officer required to examine the records of county officials, is hereby especially charged with the duty of examining into and determining each year whether or not such funds have been used or expended as herein provided. Whenever such officer discovers a violation of any provision of this sub-section, he shall forthwith report same to the Attorney General whose duty it shall be to direct the prosecution of said offense. Provided, however, that in the use and expenditure of that portion of the funds accruing hereunder to Conecuh County, the Board of Revenue of Conecuh County shall have authority to apply 40% of such funds to the purposes provided in Act approved June 16, 1931 (Local Acts 1931, page 128), this being a new levy of the same tax referred to in said local act and it not being the intention to repeal said local act, any provision herein contained to the contrary notwithstanding.

Schedule 156.10. One-third of the proceeds of the excise tax herein imposed, when collected, shall be covered into the State Treasury to the credit of the public road and bridge fund. Such funds shall be primarily charged with the payment of interest and retirement of public road and bridge bonds issued in accordance with the provisions of an amendment to the State Constitution approved by the voters of Alabama at an election held on April 12th, 1927, authorizing the issuance of highway and bridge bonds in the aggregate amounting to Twenty-five Million Dollars ($25,000,000.00). After paying interest on these bonds, a

sufficient sum shall be set aside as a sinking fund, to retire these bonds as they become due. Any residue of such fund, after provision shall have been made for the primary obligations herein set out, may be used by the Highway Commission, with the approval of the Governor, in constructing public roads and bridges within the State as now or may hereafter be provided by law, and in maintaining the public roads and bridges which have been or may hereafter be constructed by the State Highway Commission; in equipping and preparing convicts for use upon the public roads and bridges of this State; for maintenance of such convicts while so at work upon such roads and bridges; for compensating the State for the use of such convicts, and after the payment of the primary obligations the interest on the bonds issued under authority of Act No. 292 approved August 31, 1927, Acts 1927, page 278, may be paid out of the residue of the receipts of the gasoline tax collected by the State under this sub-section, after there has been taken from this fund the amount necessary to meet all of the primary purposes to which said gasoline tax fund is pledged under Article XX A, as an amendment to the Constitution of the State, and for such other use upon the public roads and bridges of this State as may be authorized by the Highway Commission with the approval of the Governor. Provided, however, that the residue of such fund shall not be expended contrary to law as it now exists or may hereafter be enacted.

Schedule 156.11. One-third of the excise tax herein imposed, when collected, shall be divided, monthly as collected, less the cost of collection, as follows: One half of said 1/3 shall be paid into the State Treasury to the credit of the State Highway Department for the public road and bridge fund, as provided by Sections 18 and 19 of an Act No. 19 of Legislature of Alabama, approved January 31, 1935, which said sections are made a part of this section and read as follows: Section 18. That the proceeds from one cent of said tax herein levied may be used by the Governor of the State of Alabama at any time within twelve months from the approval of this Act for the purpose of matching any United States Government funds on any fair and reasonable basis. Section 19. That the levy of the one cent tax as provided and levied under the provisions of an Act entitled 'An Act to Impose, for the use and purpose of

supervising, preserving, maintaining, constructing and regulating the use of public roads, and bridges in the State of Alabama, and to maintain and supervise State Convicts while working upon such roads and bridges, an excise tax on all persons, companies, agencies, corporations and associations who sell, distribute, store or draw from storage for any purpose whatsoever, gasoline or any other liquid motor fuels or devices or any substitutes therefor within the State of Alabama; providing for the collection of such [fol. 32] excise tax and the payment of same into the State Treasury to the credit of the State Highway Department for the public road and bridge funds, providing for the enforcement of this act and fixing a penalty for the violation of the provisions hereof; providing that the said excise tax so imposed shall be in addition to all other excise tax now imposed by law; and providing that freight agents of railroads and all agents of all transportation companies operating within the State of Alabama and who transport motor fuels, shall report to the State Tax Commission all shipments of gasoline or any substitute therefor, received at any of their stations within the State. Approved July 27, 1931, 'be and the same is hereby suspended as of and on February 1, 1935, and all other provisions of said act shall remain and be in full force and effect until the full payment of the amount due thereunder is paid in full and thereafter said act is hereby repealed. That the levy of the one cent tax as provided and levied under the provisions of an act entitled 'An Act to impose an excise tax in addition to any and all other excise taxes now imposed by law on persons, corporations, co-partnerships, companies, agencies or associations engaged in selling, distributing, refining, storing or withdrawing from storage for any purpose whatsoever gasoline or other liquid motor fuels or devices or substitutes therefor in this State, and providing for the collection and payment of such tax; and for the examination of the books and records of any person, corporation, co-partnerships, companies, agencies or associations engaged in selling, distributing, refining, storing or withdrawing from storage for any purpose whatsoever or other liquid motor fuels or devices or substitutes therefor in this State; providing a penalty for any false statements made in making reports to the State Tax Commission; providing for the distribution of the funds derived therefrom,

and for the use to which such funds may be put, and providing for the enforcement of this act and fixing a penalty for violation of any of the provisions hereof. Approved November 5, 1932, be and the same is hereby suspended as of and on February 1, 1935, and all provisions of said act shall remain and be in full force and effect until the full payment of the amount due thereunder is paid in full and thereafter said Act is hereby repealed; "and the other one-half of said 1/3 shall be divided equally among the 67 counties of the State of Alabama, monthly as collected, less the cost of collection, payment to be made to the County Treasurer or Depository of said counties on or before the 10th day of each month of the year, and said funds shall be used by the several counties of the State exclusively for the construction, maintenance, supervision and policing of the public roads and bridges in the respective counties; provided, however, that the Board of Revenue or other such governing body of a county may direct the State Tax Commission to pay over to the State Highway Department such part of said funds as may be agreed upon by the Board of Revenue or such other governing body of any county, and the Governor of the State of Alabama, which said funds are to be used in the construction and maintenance of roads in said county, to be agreed upon by the Board of Revenue of such county, or such other governing body, and the Governor of the State of Alabama.

Schedule 156.12. The acceptance of any money paid for the excise tax provided for in this Chapter shall in no way preclude the collection of the money actually due, provided, however, that the money actually paid shall constitute a credit against the money actually due.

Schedule 156.13. The forms for all statements and reports required under the provisions of this Chapter shall be prescribed and furnished by the State Tax Commission and the cost of the enforcement of this Chapter shall be paid out of the funds derived from the excise tax herein prescribed, upon a warrant of the State Comptroller upon a voucher of the State Tax Commission, and approved by the Governor.

Schedule 156.14. If any distributor, refiner, storer or retail dealer in gasoline covered by this Chapter shall fail to make the monthly returns prescribed herein and pay

the excise tax hereby laid, on or before the 20th day of [fol. 33] the month following sale, distribution or withdrawal, the State Tax Commission shall make return for such delinquent upon such information as it may reasonably obtain, assess the excise tax thereon, and add a penalty for failure to make such return and pay the tax herein le-i-d of twenty-five per cent (25%) of the tax due, to the amount as assessed by the Commission. If, in the opinion of the State Tax Commission, a good and sufficient cause or reason is shown for such delinquency, the State Tax Commission may remit the penalty, otherwise the penalty shall be paid.

Schedule 156.15. Within five (5) days after the State Tax Commission shall adjudge a distributor, refiner, storer or retail dealer in gasoline delinquent, such deliquent shall be notified by the State Tax Commission, by registered mail, to appear before the State Tax Commission and show cause, if any, why execution should not issue against the bond and property of such delinquent to satisfy the amount of the tax and penalties due the State. If no showing is made within ten (10) days after notice is mailed, or if such showing is not satisfactory to the State Tax Commission, execution may be issued by the State Tax Commission for the collection of such tax and penalties directed to any Sheriff of the State of Alabama, who shall proceed under such execution in the manner now provided by law under the executions issued from courts of record, and shall make return of such executions to the State Tax Commission within thirty days of the issuance thereof. The Tax and all penalties herein provided for shall be held as a debt payable to the State of Alabama by the person against whom the same shall be charged and all such tax and penalties shall be a lien against all the property in this State of the person charged therewith, superior to all other liens except tax liens to the State antecedent in date.

Schedule 156.16. In the enforcement of collection of taxes and penalties imposed by the terms of this Chapter, the Sheriff to whom an execution is issued by the State Tax Commission shall first levy upon all the property of the person against whom the tax is levied, and then make formal demand upon the bonding company for payment to the amount of the bond. If such sum as may be collected from the bonding company is insufficient, then in that event the Sheriff shall proceed to sell the property so levied upon,

and apply the proceeds first to the payment of the balance due on the excise taxes and cost involved in making such levy and sale, the residue to be paid over to the person against whom the execution is issued.

Schedule 156.17. The State Tax Commission is hereby authorized to prepare a claim against any distributor, refiner, storer, or retail dealer adjudged delinquent in payment of gasoline excise taxes and have such claim recorded in the office of the Judge of Probate of the County in which such person is doing business, or in the County where such person maintains his or their main place of business. Said claim shall be in the form of a decree by the State Tax Commission and shall set forth the amount of tax due by the person adjudged delinquent, and the penalty imposed thereon. When such claim shall have been paid the State Tax Commission shall write or cause to be written on such record the word "satisfied."

Schedule 156.18. Any distributor, refiner, storer, or retail dealer who shall violate any of the provisions of this Chapter may be restrained and the proper prosecution instituted in the name of the State of Alabama by its Attorney General or under his direction by any Circuit Solicitor of the State, or any attorney employed by the State Tax Commission with the approval of the Governor and the Attorney General, from distributing, refining, selling or withdrawing from storage any gasoline, the sale or withdrawal of which is taxable under this Chapter, until such person shall have complied with the provisions of this Chapter.

Schedule 156.19. Should any section, clause, paragraph, line, sentence or part of this Chapter be declared unconstitutional, it shall not invalidate the remaining sections or parts thereof, the Legislature hereby declaring that it [fol. 34] would have passed the remainder of said Chapter irrespective of such invalid section, clause, paragraph, line, sentence or part.

Schedule 156.20. All laws and parts of laws in conflict with the provisions of this Chapter are hereby repealed, provided that nothing in this Chapter shall be held or construed to repeal any part of Act 55, approved October 5th, 1932, Acts, Special Session, 1932, page 57. Provided further that nothing herein contained shall be held or con-

strued to repeal any law heretofore enacted providing for the collection of excise tax on the sale, distribution or withdrawal of gasoline from storage in this State until all such taxes accrued prior to the effective date of this Chapter shall have been collected.

[fol. 35] EXHIBIT "F" TO BILL OF COMPLAINT

August 22, 1928.

The State Tax Commission, Capitol.

DEAR SIRS:

Construction of Act No. 62, 1923, page 36 and of Act No. 3, Acts, 1927, page 790, as amended by Act No. 340, Acts, 1927, page 326, as applied to sales of gasoline to United States.

Opinion by Assistant Attorney General Evans

Receipt of your letter of June 1st, 1928, is hereby acknowledged. You wish to know if, in view of the decision of the United States Supreme Court, in the case of the Panhandle Oil Co. vs. The State of Mississippi, Supreme Court Reporter, Vol. 48, page 451 et seq., the opinion rendered by Hon. Harwell G. Davis, former Attorney General, of date June 13th, 1923, upholding the right of the State of Alabama to collect Gasoline tax provided for by Act No. 62, Acts, 1923, page 36, et seq., when gasoline is sold to an instrumentality of the Government of the United States, is tenable. In other words, is the method of taxation, as applied to gasoline, in this State, so materially different from that of the State of Mississippi that the tax may be collected when gasoline is sold in this State to the United States Government, while the tax provided by the law of the State of Mississippi may not be collected, because it conflicts with the Constitution of the United States.

In reply will say that the reasons given in said opinion by the Supreme Court of the United States for the unconstitutionality of the Mississippi law, as applied to sales of gasoline to the United States by a distributor, apply with equal force to the statutes of the State of Alabama, whether the Act of 1923, or that of 1923, as amended Acts, 1927, page 326, et seq.

The tax levied by the State of Alabama, as far as necessary here to quote, is as follows:

"Section 3. (a). Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the selling, distributing, or withdrawing from storage, for any use, gasoline as defined in this state; provided, however, that this excise tax shall not be levied upon the sale of gasoline in interstate commerce; and provided, further, that where the excise tax of two cents per gallon upon the sale of such gasoline shall have been paid by a distributor or by a retail dealer or storer such payment shall be sufficient, the intention being that the tax shall not be paid but once."—Acts, 1927, page 327.

The part of the Mississippi law quoted in the opinion of the Supreme Court of the United States, and upon the effect of which the opinion is based, reads as follows:

"Any person engaged in the business of distributing gasoline, or retail dealer in gasoline, shall pay for the privilege of engaging in such business an excise tax of 1 cent per gallon upon the sale of gasoline * * * except that sold in interstate commerce or purchased outside of the State and brought in by the consumer for his own use."

The reason given by the Supreme Court of the United States why such Mississippi tax could not be made to apply to sales made by a distributor or retail dealer to the United States are as follows:

[fol. 36] "The sale made by a Mississippi dealer to the United States for the use of its Coast Guard Fleet in service of the Gulf of Mexico and its Veterans' Hospital at Gulfport. The Supreme Court, in said opinion, says:

'The United States is empowered by the Constitution to maintain and operate the fleet and hospital. That authorization and laws enacted pursuant thereto are supreme, and in case of conflict, they control state enactment.'

"The States may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of federal functions."

"The right of the United States to make such purchases is derived from the Constitution. The petitioner's right to

make sales to the United States was not given by the State and does not depend on the State laws; it results from the authority of the national government under the Constitution to choose its own means and sources of supply. While Mississippi may impose charges upon petitioner for the privilege of carrying on trade that is subject to the power of the state, it may not levy a tax upon transactions by which the United States secures the things desired for its governmental purposes."

"The validity of the taxes claimed is to be determined by the practical effect of enforcement in respect of sales to the government. A charge at the prescribed rate is made on account of every gallon acquired by the United States. It is immaterial that the seller and not the purchaser is required to report and make payment to the State. Sale and purchase constitute a transaction by which the tax is measured and on which the burden rests."

"The amount of money claimed by the State rises and falls precisely as does the quantity of gasoline so secured by the government. It depends immediately upon the number of gallons. The necessary operation of these enactments when so construed is directly to retard, impede and burden the exertion by the United States of its constitutional powers to operate the fleet and hospital. To use the number of gallons sold the United States as a measure of the privilege tax is, in substance and legal effect, to tax the sale. And that is to tax the United States—to exact tribute on its transactions and apply the same to the support of the State.

"The exactions demanded from petitioner infringe its right to have the constitutional independence of the United States in respect of such purchases remain untrammeled."

In the above quotations from the opinion of the Supreme Court of the United States, I have omitted citations of opinions therein used as being unnecessary for the purpose at hand.

The tax levied by the State of Alabama is "an excise tax of two cents per gallon upon the selling, distributing or withdrawing from storage for any use." The tax levied by the State of Mississippi is that "any person engaged in the business of distributing gasoline or retail dealer in gasoline shall pay for the privilege of engaging in such

business an excise tax of one cent per gallon upon the sale of gasoline."

It is quite evident, when the reasons given by the United States Supreme Court are considered, that such reasons are as applicable to the Alabama law as to the Mississippi law. When a sale is made by a distributor, retail dealer or storer of gasoline to the United States, whether Alabama or Mississippi no tax can be collected on such sale from either the seller or purchaser, and no tax can be exacted of the seller measured by the number of gallons of gasoline so sold.

[fol. 37] Mississippi taxes the business with a tax measured by the number of gallons sold, while Alabama taxes the sale of each gallon sold at two cents per gallon. Alabama also taxes the distributing or withdrawing from storage for any use. It taxes but once, and where there is a sale, the tax is on the sale. Where there is no sale, but a distribution or withdrawing from storage for some use, other than selling, there is a tax on such withdrawal or distribution. We are not here considering such withdrawals, but only sales to the United States.

If the sale, in any case, is not, in effect, a sale to the United States, then, the reasons given in said opinion do not apply and the tax should be collected, unless exempt for some other reason.

When a distributor, retail dealer or storer of gasoline claims a reduction in his tax by reason of some of the sales having been made to the United States, the burden is upon him to satisfy the Tax Commission that the sales, for which reduction is claimed, were in fact, or effect, to the United States.

It will be noticed from reading the excerpts of the said opinion by the Supreme Court of the United States, that said Court had to cogitate to reach the conclusion that the Mississippi tax "is, in substance and legal effect, to tax the sale," which it concludes is not admissible on sales to the United States. The Alabama tax is, in its very words, a tax upon the sale, where sales are made; while Attorney General Davis had to cogitate to reach the conclusion that the Alabama tax "is a privilege or license tax for engaging in the business of selling gasoline." In other words the Supreme Court of the United States construed the Mississippi law to mean exactly what is stated in the Ala-

bama law, while Mr. Davis construed the Alabama law to mean exactly what is stated in the Mississippi law. The Supreme Court of the United States held that while the Mississippi statute purports to be a privilege tax for engaging in the business of selling gasoline it "is, in substance and legal effect, to tax the sale." On the other hand Mr. Davis held that while the Alabama law purports to be a tax on the sale of gasoline, it is, in substance and legal effect, a privilege tax for engaging in the business of selling gasoline, and for that reason it does not matter to whom the gasoline is sold.

Both laws are, in effect, the same when applied to sales to the United States.

I, therefore, conclude that the said opinion handed down by the Supreme Court of the United States is in conflict with the opinion given by Hon. Harwell G. Davis of date June 13th, 1923, to Hon. F. C. Marquis, Associate Member, State Tax Commission, and that said opinion by the former Attorney General is no longer tenable.

In this opinion I have quoted from and discussed the Alabama Act of 1927, as the Act of 1923, the Act construed by Mr. Davis, is plainly a tax on the sale of gasoline and nothing more or less.

Yours truly, Charlie C. McCall, Attorney General.

[fol. 38] EXHIBIT "G" TO BILL OF COMPLAINT

November 22, 1928.

Hon. Jno. G. Sargent, Attorney General, Washington, D. C.

DEAR SIR:

On sales of motor fuels to United States, by dealers in Alabama no tax exacted. Where such tax has been paid in past, Alabama has no law by which refund can be made.

Opinion by Assistant Attorney General Evans

Receipt of your letter of November 9th is acknowledged. You ask if any administrative procedure has been established by the State authorities exempting from tax, motor vehicle fuels sold to the United States by dealers who are accountable to the State for the tax, the date when the

procedure became effective, and whether claims for the refundment of taxes heretofore erroneously collected will be allowed if properly supported by evidence of payment, and what should be made in such claims.

In reply will say that after decision by the Supreme Court of the United States in the case of Panhandle Oil Company vs. State of Mississippi, all such dealers in this state made objection to further payment of such tax on sales made by them to the United States. Thereupon, the State Tax Commission of Alabama asked the opinion of this office as to whether such dealers were liable under the Alabama law on sales to the United States. This office gave the opinion that there was no tax intended under the Alabama law on such sale. As I am informed, by the State Tax Commission, no such tax has been collected or requested since the decision in the Panhandle case.

While the State of Alabama has some statutes providing for refunding certain taxes erroneously paid, in my opinion, none of such statutes apply in case of the tax in question. If refund is made, the Legislature will have to make provision for such refund.

Yours truly, Charlie C. McCall, Attorney General.

[fol. 39] EXHIBIT "II" TO BILL OF COMPLAINT

July 5, 1935.

Hon. Henry S. Long, President, State Tax Commission, Capitol:

DEAR SIR:

The aggregate tax imposed by the several gasoline excise tax statutes is a privilege tax upon the storage and consequent withdrawal from storage, of gasoline, which tax accrues upon amount at the time of withdrawal from storage, and it is the mandatory duty of refiners, storers and distributors to compute and pay the tax as applicable to them on the basis of their withdrawals from storage. In computing and paying the several amounts of tax due by them, distributors, refiners, retail dealers, and storers are not entitled to deduct from the basis of computation a number of gallons equal to the number of gallons of gasoline

withdrawn from storage by them and sold to the United States Government in Alabama.

Opinion by Assistant Attorney General Bibb

I wish to acknowledge receipt of your letter of June 3, 1935, as follows:

"Your opinion is desired on the following questions by this department:

"1. Is the tax imposed by the gasoline excise statutes, (Acts 1923, p. 36; Acts 27, p. 16; Acts 1931, p. 859; Acts 1932, p. 314) a tax upon the sale of gasoline in this State, or a tax upon the withdrawal of gasoline from storage in this State?

"2. Is it mandatory for refiners, storers and distributors to compute and pay this tax on the basis of their withdrawal?

"3. If the refiner, storer and distributor must compute and pay this tax on the basis of their withdrawals, does the tax accrue at the time of the withdrawal from storage for wholesale trade or at the time of the withdrawal for delivery to retail dealers?

"4. If the tax is a tax upon gasoline withdrawn from storage in Alabama, is a distributor, refiner, retail dealer, or storer of gasoline exempt from payment of this tax upon gasoline sold to the United States Government in Alabama?"

The pertinent provisions of the several gasoline excise tax acts referred to are as follows:

Acts of 1923, p. 36 as amended by Acts of 1927, p. 326, provides as follows:

[fol. 40] "Section 2. Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the selling, distributing or withdrawing from storage for any use gasoline as herein defined in this State, provided however that this excise tax shall not be levied upon the sale of gasoline in interstate commerce, and provided further that where the excise tax of two cents per gallon upon the sale of such gasoline shall have been paid by a distributor or by a retail dealer

or storer such payment shall be sufficient, the intention being that the tax shall not be paid but once. (b) The excise tax imposed by subdivision (2) of this section shall apply to persons, firms, corporations, dealers or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage, whether such withdrawals be for sales or other use—provided that 'sellers' of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions."

An additional excise tax at the rate of two cents per gallon was added by Acts 1927, p. 16, Sections 2 and 3 of which are together identical with Section 2 of Acts of 1923 as amended by Acts of 1927, page 326 as quoted above. Acts of 1931, p. 859 (No. 743) adopting the same definitions used in the prior acts above referred to levied an additional excise tax of one cent per gallon, using language, Sec. 2-A (b) identical with the language of Sec. 2 (b) of said Acts of 1923 as amended.

Acts of 1932, p. 314, adopts the same definitions as embraced in the other acts referred to, adds the term "refiner" as "any person who manufactures, distills, blends, compounds or mixes any one or more products in the production of a liquid motor fuel as herein defined," levies an additional tax equal to one cent per gallon in language identical with that quotation above set out, and provides in Section 3:

"Sec. 3. The excise tax imposed by Section 2 hereof shall apply to persons, firms, corporations, dealers, refiners, or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage whether such withdrawals be for sale or other use; provided, that 'sellers' of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and refiners, storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions."

With this review of and quotation from the several legislative enactments in mind, we may now consider your questions in the order set out.

Answering your question (1), it is my opinion that the aggregate tax levied by these several enactments constitutes essentially an excise or privilege tax upon the storage, and the consequent withdrawal from storage, of gasoline in this State. The intention of the legislature is made quite clear by the repeated use in each of the acts of the language, "the excise imposed by Section — hereof shall apply to persons, firms, corporations, dealers (refiners) or distributors *storing gasoline and distributing the same or* [fol. 41] *allowing the same to be withdrawn from storage whether such withdrawals be for sale or other use.*" This interpretation has been placed upon these several enactments by the Supreme Court of Alabama in State v. City of Montgomery, 228 Ala. 93, 151 So. 856, wherein, after reciting the legislative history of these several acts, the Court said:

"The acts in question imposed a tax upon a storer as well as a distributor or retail dealer. We think this is true, though it is not due until it is withdrawn from storage and is measured by the amount so withdrawn rather than the amount placed in storage. True, it may leak out, waste out of storage or may explode, and thereby and to that extent no tax is payable; *but the whole of the acts taken together show, we think, that the purpose is to impose the tax on the storage* though measured by the amount withdrawn; and then it becomes due to be paid." (Emphasis supplied.)

Again these statutes were construed by the Court of Appeals, fifth circuit, in Pan-American Petroleum Corporation v. State of Alabama, 67 Fed. (2d) 590, wherein the court said:

"In our opinion, it (the tax) *is payable upon the withdrawal of gasoline from storage within the state,* because by the very language of the statute the tax imposed applies to dealers, distributors and storers, the moment they withdraw it from storage, whether the withdrawal be for sale or other use." (Emphasis supplied.)

An almost identical enactment by the Legislature of Tennessee was so construed in Foster & Creighton Company v. Graham, 285 S. W. 570 (Tenn. 1926).

Answering your question (2), it is my opinion that under these several acts, it is mandatory that refiners, storers and distributors compute and pay the several taxes levied upon them upon the basis of their withdrawals from storage.

It will also be noted that the pertinent provision, which appears in all of these several acts referred to, is "provided that 'sellers' of gasoline and its substitutes paying the tax herein provided *may* pay the same computed and paid on the basis of their sales as hereinafter required and storers and distributors *shall compute* and *pay* this tax on the basis of their withdrawals or distribution." Acts of 1927, p. 16, Sec. 3; Acts of 1927, p. 326, Sec. 3 (b); Acts of 1931, p. 859 (No. 743), Sec. 2-A; Acts of 1932, p. 314, Sec. 3. The use of words "may" and "shall" is made significant in these provisions. As a general rule, the word "may" when used in a statute is permissive only, and operates to confer discretion, while the word "shall" is imperative. 59 C. J. 1079, Sec. 635; Coleman v. Eutaw, 157 Ala. 327, 47 So. 703.

There is no ambiguity in this language, and the decisions cited and quoted from above sufficiently disclose the Court's recognition of this mandatory effect of the language used with regard to storers and distributors and in Acts of 1932 with regard to refiners.

In answer to your question (3), it is my opinion that the tax imposed by the several acts accrues upon and at the time of withdrawal from storage, and whether the withdrawal is actually made for wholesale or retail trade or for other use is immaterial.

As was said further in State v. City of Montgomery, 228 Ala. 93, 151 So. 856, above quoted from.

"Since the *privilege of storing* is the basis of the tax, and [fol. 42] for that purpose an excise tax may be levied, it is not controlled by Section 91 of the Constitution, and it is immaterial to what use it (gasoline) is put after it is withdrawn from storage."

The quotation from Pan-American Petroleum Corporation v. State of Alabama, 67 Fed. (2d) 590, above set out in answering question (1) is here pertinent, and also this further quotation from that case, page 591:

"That a state has the power to levy an excise tax upon the withdrawal of gasoline from storage regardless of the

use to which it is put, and even though it be consumed in the generation of active power for carrying on interstate commerce, is settled by the decision of the Supreme Court in Edelson v. Baling Air Transport, 289 U. S. 249, 53 S. Ct. 591, 77 L. Ed. 1155."

It will be observed that the time for the payment of the amounts of such excise tax as shall have accrued is fixed in each act in the same manner. By Section 4 of Acts of 1927, p. 16, Section 4 of Acts of 1927, p. 326, Section 3 of Acts of 1931, p. 859 (No. 743) and Section 4 of Acts of 1932, p. 314 (No. 324) it is provided:

"Section 4. On or before the twentieth day of each month after this act shall have taken effect, every person upon whom this excise tax is levied shall render to the State Tax Commission on forms prescribed by such commission a true and correct statement of all sales and withdrawals of gasoline made by him or them during the next preceding month, liable for the excise tax herein prescribed, and shall furnish the same Commission such additional information as such Commission may require upon blanks to be formulated and furnished by said Commission, and at the time of making such report shall pay to the State Tax Commission an amount of money equal to the excise tax herein laid."

With further reference both to questions (2) and (3), it is perhaps appropriate here to point out that the term "refiner" was first introduced in the definitions and classifications contained in these Acts by the act approved November 5, 1932, Acts of 1932, p. 314 (No. 324) which levied the most recent additional tax equal to one cent per gallon, and is there defined in Section 1 as "any person who manufactures, distills, blends, compounds or mixes any one or more products in the production of a liquid motor fuel as herein defined." Your attention is directed to an opinion of this office dated May 6, 1932, Biennial Report of Attorney General 1930-1932, p. 828, wherein after treating the matter in detail, it was ruled that a "refiner of gasoline in Alabama is a manufacturer and as such is not subject to the gasoline taxes required of distributors, retail dealers and storers under the several Acts of 1923, 1927 and 1931, more particularly referred to above. It therefore follows that "refiners" are embraced only in the Act of 1932, and the tax there levied, and the computation and accrual of the taxes

due from such refiners is to be determined only to the extent and in the amount required by that Act.

I take it that by your question (4), you mean to inquire whether a distributor, refiner, retail dealer, or storer of gasoline, in computing and paying the taxes imposed by the several acts heretofore referred to, has a right to deduct from the basis of computation of the tax a number of gallons equal to the number of gallons of gasoline withdrawn from storage by him and actually sold to the United States [fol. 43] Government within the State of Alabama.

My answer is in the negative. This question is essentially whether the several acts above referred to, with respect to any purchases of gasoline in this State by the United States, operate as a tax on the United States, or its constitutional agencies, directly or in such a manner as to retard, impede or burden the exertion by the United States of its Constitutional powers. That a state has not the power to tax the Federal Government or any of its constitutional agencies is too fundamental in the jurisprudence of this Country to require citation of authority here. In my opinion, these acts do not so operate.

In this connection it is essential to bear in mind that the taxes levied by these several acts are not property taxes upon gasoline; they are not taxes upon the sale of gasoline; but by express terms of the statutes and by judicial construction, they are taxes upon the privilege of storing gasoline. Acts cited above; State v. City of Montgomery, 228 Ala. 93, 151 So. 836.

The leading authority on the question of the effect of state taxes on the sale of gasoline as applied to purchases thereof by the United States Government in such state, is the decision of the Supreme Court of the United States in Panhandle Oil Company vs. State of Mississippi, 277 U. S. 218, 48 S. Ct. 451, L. ed. 857, 56 A. L. R. 583. That case arose as an action by the State of Mississippi to collect a license tax from the oil company upon the sale of gasoline to the United States for the use of its coast guard fleet and its Veterans' Hospital at Gulfport. The laws of Mississippi provided that "any person engaged in the business of distributing gasoline or retailers dealers in gasoline, shall pay for the privilege of engaging in such business an excise tax of one cent per gallon *upon the sale of gasoline,*" with certain ex-

ceptions not here material. In holding the company not liable for the tax upon the sales in question, the Court used the following language, which I will set out at some length in order that the distinction between the facts and statute there dealt with and the conditions obtaining under our statutes may be more clearly apparent. It was there said:

"The validity of the taxes claimed is to be determined by the practical effect of enforcement in respect of sales of the government. Wagner v. Covington, 251 U. S. 95-102, 64 L. ed. 157, 40 Sup. Ct. Rep. 93. A charge at the prescribed rate is made on account of every gallon acquired by the United States. It is immaterial that the seller and not the purchaser is required to report and make payment to the state. Sale and purchase constitute a transaction by which the tax is measured and on which the burden rests. The amount of money claimed by the state rises and falls precisely as does the quantity of gasoline so secured by the Government. It depends immediately upon the number of gallons. The necessary operation of these enactments when so construed is directly to retard, impede and burden the exertion by the United States, of its constitutional powers to operate the fleet and hospital. M'Colloch v. Maryland, supra, 436 (4 L. ed. 608); Gillespie vs. Oklahoma, supra, 505 (66 L. ed. 340, 42 Sup. Ct. Rep. 171); Jaybird Min. Co. vs. Weir, 271 U. S. 609, 613, 70 L. ed. 1112, 1114, 46 Sup. Ct. Rep. 592. To use the number of gallons sold the United States as a measure of the privilege tax is in substance and legal effect to tax the sale. Western U. Teleg. Co. v. Texas, 105 U. S. 460, 26 L. ed. 1067; Frick vs. Pennsylvania, 268 U. S. 473, 494, 69 L. ed. 1058, 1064, 42 A. L. R. 316, 45 Sup. Ct. Rep. 603. And that [fol. 44] is to tax the United States—to exact tribute on its transactions and apply the same to the support of the State."

It clearly appears that the basis of the Court's decision was that the tax there in question was levied upon actual sales—that inasmuch as purchase and sale constitute but one transaction, it was in effect a direct tax upon the purchase by the government and hence a tax upon the United States. It is readily seen that the taxes levied under the Acts here in question are essentially different in character. This distinction is noted by the Circuit Court of Appeals in the Pan-American Petroleum Corporation vs. State of

Alabama, 67 Fed. (2d) 590, and the acts here in question construed not to come within the principles laid down in the Panhandle Case the Court saying:

"It is to be conceded that an excise tax on the sales of gasoline is inoperative as to sales made to the United States, either directly, or indirectly through one of its departments, for government use. Panhandle Oil Co. v. State of Mississippi, 277 U. S. 218, 48 Sup. Ct. 451, 72 L. ed. 857, 56 A. L. R. 583. There a sale of gasoline was made direct to the United States for the use of the coast guard and a government hospital. No doubt the ruling would have been the same if the sales had been made directly to these instrumentalities of the government, for then also the United States would have been the real purchaser. *But the tax here is not on the sale but is on the withdrawal of the gasoline.*"

In construing the character of the tax levied by the laws of Tennessee, providing that "the tax imposed by this act shall apply to persons, firms or corporations, dealers or distributors, storing any of the products mentioned in this Act, and distributing the same, or allowing the same to be withdrawn from storage, whether such withdrawal be for sale or other use," it was said in Nashville C. & St. L. Ry. vs. Wallace, 288 U. S. 249, 53 Sup. Ct. 345:

"Storage of the gasoline and withdrawal of it from storage within the state for use or sale are, as th State Supreme Court has held, the events which, by the very terms of the statute, call it into operation * * *."

"The power to tax property, the sum of all the rights and powers incident to ownerships, necessarily includes the power to tax its constituent elements. * * * Here the tax is imposed on the successive exercise of two of those powers, the storage and withdrawal from storage of the gasoline. Both powers are completely exercised before use of the gasoline in interstate commerce begins."

While this decision involved obviously a question of interstate commerce, and not a United States purchase its is significant of the court's recognition of the character of tax as essentially different from that dealt with in the Panhandle case.

[fol. 45] So far as our tax statutes are concerned, it seems to be quite immaterial what is done with the gasoline after

it is removed from storage. As was said further in the Pan-American Petroleum case (67 Fed. (2) 590):

"That a state has the power to levy an excise tax upon the withdrawal of gasoline from storage *regardless of the use to which it is put,* and even though it be consumed in the generation of motive power for carrying on interstate commerce, is settled by the decision of the Supreme Court in Edelman v. Baling Air Transport, 289 U. S. 249, 53 Sup. Ct. 591, 77 L. ed. 1155."

Again, in American Airways vs. Wallace, 57 Fed. (2d) 877, which was an effort of the interstate carrier of mail, freight and passengers by plane to enjoin the collection of a like tax under the very much similar statutes of Tennessee above referred to on gasoline purchased by the Company admittedly in interstate commerce, stored on its own property and used exclusively in fueling planes engaged in carrying United States mail, freight and passengers in interstate commerce, the court said:

"It is apparent that not every person who uses his property or derives a profit in his dealings with the government, may clothe himself with immunity from taxation on the theory that either he or his property is an instrumentality of government within the meaning of the rule. Metcalf v. Mitchell, 269 U. S. 514. 460 Sup. Ct. 172, 70 L. ed. 384.

"'The statute in question does not impose a tax on the Federal Government, nor an instrumentality of the government, nor is it a burden upon or regulation of a governmental function. It is simply a privilege tax upon engaging in a business within the state, and applies to all persons, firms or corporations doing a like business."

The tax in question is somewhat analogous to a state tax based on a percentage of the gross premiums collected by casualty insurance companies from fidelity bonds written as required by federal statute, upon certain officers of the United States and paid for by the United States. Such a tax is valid. Fidelity Deposit Co. v. Pennsylvania, 240 U. S. 319, 60 L. ed. 664, 36 Sup. Ct. 298.

While it is of course, apparent that many of the decisions above cited deal with questions of interstate commerce and not purchases by the Federal Government, they nevertheless afford apt indication of the court's interpretation of

statutes almost identical with ours and its recognition of the essential character of the tax levied by the Acts in question. Moreover, it clearly appears that the decisions chiefly relied upon by the Supreme Court in declaring the particular sales tax dealt with in the Panhandle case invalid as applied to purchases by the United States Government dealt with questions of interstate commerce. It is perhaps worthy of note that the law governing state taxation as affecting interstate commerce has become more liberal since the rendition of the decisions relied on in the Panhandle case.

[fol. 46] It, therefore, appears to me that so far as purchases of gasoline by the United States Government are concerned, these tax acts in question do not impose a burden upon the United States Government, or retard, impede or burden the exercise of its constitutional powers. True it may be that the effect of these taxes may be to increase the price of the commodity which the Federal Government may desire to purchase. This is true in more or less degree with regard to any tax which the state might impose, but that alone does not invoke the constitutional prohibition. The limitations of doctrine of governmental immunity from taxation were well pointed out many years ago in Union Pac. Ry. Co. v. Perriston, 18 Wall. 5, 21 L. ed. 787, wherein it was said:

"It cannot be that a state tax which remotely affects the efficient exercise of a federal power is for that reason alone inhibited by the Constitution. To hold that would be to deny to the states all power to tax persons or property. Every tax levied by a state withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which Federal taxes must be paid. The states are, and they must ever be coexistence with the National Government."

Yours very truly, A. A. Carmichael, Attorney General.

pdb:b.

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed Oct. 12, 1935

Defendants in the above entitled action now file their motion and hereby move to dismiss the above entitled action and to dismiss plaintiff's bill of complaint on file in said action upon each and every of the following grounds, separately and severally:

1. For that there is no equity in the bill.

2. For that under the allegations of Plaintiff's bill, it is not entitled to equitable relief.

3. That the plaintiff's rights are defined and established by the laws and statutes of the State of Alabama, and that the rights so established and defined are conclusive and preclude the Court from granting the relief prayed for in the bill of complaint.

4. That the Court has no jurisdiction of the cause of action attempted to be averred in the said bill.

5. That the plaintiff has a plain, adequate and complete remedy at law.

6. The plaintiff has not made or stated such a case in the bill as entitles it to the relief prayed or to any relief.

7. That the averments of the bill do not show that the excise tax levied by the several statutes of the State of Alabama constitute a tax of six cents (6¢) per gallon on all [fol. 48] gasoline or other liquid motor fuel sold by the plaintiff to the United States in the State of Alabama.

8. It does not appear either from the facts averred in the bill or from the provisions of the several statutes of the State of Alabama, quoted or referred to therein, that the tax levied by such statutes constitutes a tax upon the United States or is such a tax as retards, impedes or burdens the execution by the United States of its constitutional powers.

9. It does not appear either from the facts averred in the bill or from the provisions of the several statutes of the State of Alabama quoted or referred to therein that

such statutes violate any right guaranteed to the plaintiff by the Constitution of the United States.

10. The averments of the bill do not show that the plaintiff is a constitutional agency or instrumentality of the United States and as such exempted in the conduct of its activities from taxation by the State of Alabama.

11. That there is a non-joinder of parties defendant in that the Honorable Bibb Graves, Governor of Alabama, is not made party defendant to said bill.

12. For it affirmatively appears from the averments of the bill that the plaintiff is not an agency of the United States Government or entitled to the exemptions inuring to the United States and its agencies created to carry out its constitutional functions.

13. For that the court judicially knows that the taxes levied by the said several Acts referred to are levied on all storers of gasoline and it is not averred that the United States or any of the agencies of the United States are storers of gasoline or that plaintiff is an agent or instrumentality of the United States entitled to the immunity of the United States.

14. For that it is averred by paragraph 9 of said bill as follows:

"Under the provisions of an act of the Alabama Legis-
[fol. 49] lature approved October 5, 1932 (General Acts of Alabama of 1932, p. 57) each person before engaging in the business of selling, distributing or withdrawing from storage gasoline or other motor fuels in Alabama must procure a license from the State Tax Commission to carry on such business. Section 6 of said act provides that if any such distributor fails to pay all the taxes imposed upon him for engaging in the business of selling, distributing and withdrawing from storage of gasoline, the State Tax Commission may revoke his license upon ten days' written notice to him."

And said averment wholly fails to aver that said license has been revoked or that the State Tax Commission has threatened to revoke said license issued to plaintiff.

15. The allegation of paragraph 10 of said bill that said Acts are violative of the Constitution of the United States

is a mere conclusion of the pleader and contrary to the Court's judicial knowledge.

16. It affirmatively appears from the allegations of said bill, and by the Acts referred to, that the excise tax on gasoline levied by the several Acts described or set out in said bill is an excise tax on the storage of such gasoline in Alabama, said tax to be measured by the withdrawals in Alabama and as such is not a tax on the United States and does not directly retard, impede or burden the United States in the execution of its constitutional functions.

17. The averments of paragraphs (e) and (f) of said bill that the excise tax imposed by said Acts referred to is in violation of the rights guaranteed to plaintiff under the Constitution is a mere argumentive averment of the pleader, it affirmatively appearing from said bill and from the Acts referred to that the excise tax thereby levied, is levied on storers of gasoline, measured by the amount withdrawn from storage, and that there is nothing in the Federal Constitution prohibiting the State from levying such a tax.

18. It affirmatively appears from said bill and from the Acts described and referred to therein that said Acts levy the excise tax on storers of gasoline and that such levy of [fol. 50] such excise taxes is not violative of Section 1 of Article 14 of the Constitution of the United States. The averment that plaintiff will be subject to a penalty of twenty-five per cent (25%) is a mere averment of the pleader contrary to the Court's judicial knowledge and inconsistent with other averments of said bill.

19. The averments of the bill do not sufficiently show that said Acts, as interpreted by the Attorney General and by the Supreme Court of Alabama, are such as to cause plaintiff immediate, continuing and irreparable loss and damage.

20. For that it is not averred that criminal prosecution has been commenced or threatened; it is not averred that plaintiff's license to do business has been revoked or that such revocation has been threatened; it is not shown by the bill as a whole that the plaintiff would be subject to a penalty of twenty-five per cent (25%) of the amount of the tax found to be due, but that to the contrary, said bill, together with the Acts referred to, shows that no twenty-five

per cent (25%) penalty has been levied or is levyable under the allegations of said bill.

21. For that it affirmatively appears from the allegations of said bill that the tax levied by the several Acts is a tax levied on storers of gasoline in Alabama, and it affirmatively appears that plaintiff is a storer of gasoline in the State of Alabama and as such is subject to the excise tax levied by the said several Acts and it does not appear that any tax has been sought or claimed from the United States by the State of Alabama and hence the allegations that the collection of excise taxes under the provisions of said Act upon all gasoline stored in Alabama measured by the amount withdrawn from storage retards, impedes or hinders the United States Government in carrying out its constitutional powers, is a mere averment of the pleader and immaterial to this case, the United States Government not being a party and no tax being sought from the United [fol. 51] States Government.

22. For that the averments of said bill that plaintiff will be subject to a multiplicity of suits is a mere conclusion of the pleader and contrary to the Judicial knowledge of the Court.

A. A. Carmichael, Attorney General; Frontis H. Moore, Assistant Attorney General; Peyton D. Bibb, Assistant Attorney General; Richard T. Rives, Thomas J. Judge, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 52] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTING CAUSE, ETC.—Filed Oct. 12, 1935

In this cause, it is ordered that the motion made by the plaintiff in said cause for an interlocutory injunction as prayed in and by the bill of complaint filed in said cause is hereby set down for hearing before the Honorable Joseph C. Hutcheson, Circuit Judge, the Honorable Robert T. Er-

vin, District Judge, and the Honorable C. B. Kennamer, District Judge, at the Court Room of the United States District Court for the Middle District of Alabama, in the City of Montgomery, in the State of Alabama, on Thursday, the 24th day of October, 1935, at 10 o'clock A. M.

C. B. Kennamer, Judge.

At Chambers, October 12, 1935.

[File endorsement omitted.]

[fol. 53] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 662

NOTICE OF HEARING—Filed Oct. 17, 1935

To the Honorable Bibb Graves, Governor of the State of Alabama:

Notice is hereby given as required by law that the hearing of the motion made by the plaintiff in the above entitled cause for an interlocutory injunction as prayed in and by the bill of complaint filed in said cause has been set down for hearing before the Honorable Joseph C. Hutcheson, Circuit Judge, the Honorable William I. Grubb, District Judge, and the Honorable C. B. Kennamer, District Judge, at the Court Rooms of the United States District Court for the Middle District of Alabama, in the City of Montgomery, in the State of Alabama, on Thursday, the 24th day of October, 1935, at 10 o'clock A. M., and that such hearing will be had at said time and place or as soon thereafter as the said judges may direct. The purpose of said interlocutory injunction as prayed in and by said bill is to restrain the defendants in said cause from the enforcement or execution as against plaintiff in said cause of the following acts of the Legislature of Alabama in so far as said acts levy or impose an excise tax on plaintiff for the privilege of selling or withdrawing from storage for the purpose of selling gasoline or other liquid motor fuels in the State of Alabama to the United States, its departments or agents performing governmental functions in said State, viz:

An Act approved February 10, 1923, entitled

"An Act imposing an excise tax on persons, corporations, co-partnerships, companies, agencies or associations engaged in the business of selling or distributing gasoline or other liquid motor fuels in this state, etc." (General Acts of Alabama of 1923, p. 36), as said act was amended by an act approved August 27, 1927 (General Acts of Ala-
[fol. 54] bama of 1927, p. 326), and as further amended by an act approved July 15, 1931 (General Acts of Alabama of 1931, p. 458);

An Act approved January 25, 1927, entitled

"An Act to impose an excise tax in addition to that already imposed by the act approved February 10, 1923, on persons, corporations, co-partnerships, companies, agencies or associations engaged in the business of selling, distributing, storing or withdrawing from storage for any purpose whatsoever gasoline or other liquid motor fuels or devices or substitutes therefor in this state, etc." (General Acts of 1927, p. 16);

An Act approved July 27, 1931, entitled

"An Act to impose for the use and purpose of supervising, preserving, maintaining, constructing and regulating the use of public roads and bridges in the State of Alabama, and to maintain and supervise state convicts while working upon such roads and bridges, an excise tax on all persons, companies, agencies, corporations and associations who sell, distribute, store or draw from storage for any purpose whatsoever, gasoline or any other liquid motor fuels or devices or any substitutes therefor within the State of Alabama; etc." (General Acts of Alabama of 1931, p. 859);

"An Act approved November 5, 1932, entitled

"An Act to impose an excise tax in addition to any and all other excise taxes now imposed by law on persons, corporations, co-partnerships, companies, agencies or associations engaged in the business of selling, distributing, refining, storing or withdrawing from storage for any purpose whatsoever gasoline or other liquid motor fuels or devices or substitutes therefor in this State; etc." (General Acts of Alabama of 1932, p. 314);

"An Act approved January 31, 1935, entitled

"An Act to impose an excise tax in addition to any and all other excise taxes now imposed by law on persons, corporations, co-partnerships, companies, agencies or associations engaged in selling, distributing, refining, storing or withdrawing from storage for any purpose whatsoever gasoline or other liquid motor fuels or devices or substitutes therefor in this State; and providing for the collection and payment of such tax; and for the examination of the books and records of any persons, corporations, co-partnerships, companies, agencies or associations engaged in selling, distributing, refining, storing or withdrawing from storage for any purpose whatsoever gasoline or other liquid motor fuels or devices or substitutes therefor in this State, etc."

Article XIII, Chapter 4, of the General Revenue Act of 1935 approved July 10, 1935, which imposes an excise tax on persons, corporations, co-partnerships, companies, counties, municipal corporations, school boards or agencies of the State or other agencies or associations engaged in the selling or withdrawing from storage of gasoline and other liquid motor fuels in the State.

The application for said interloeutory injunction by plaintiff is for the reasons and upon the grounds stated in its said bill of complaint.

Witness my hand and seal of this Court at office in the [fol. 55] City of Montgomery, Alabama, on this, the 14th day of October, 1935.

O. D. Street, Jr., Clerk.

To any Marshal of the United States:

You are hereby commanded to forthwith serve the foregoing notice upon the Honorable Bibb Graves, Governor of the State of Alabama, and to make due return of your action in the premises.

Witness my hand and seal of Court at office in the City of Montgomery, Alabama, on this, the 14th day of October, 1935.

O. D. Street, Jr., Clerk.

Executed by delivering copies of the within to Bibb Graves, Governor of the State of Alabama, Albert A. Carmichael, Attorney General for the State of Alabama, Henry

S. Long, President of the State Tax Commission, John P. Kohn, Sr., and W. W. Ramsey, Associate Members of the State Top Commission.

This the 17th day of October, 1935.

Walter Bragg Smith, United States Marshal.

[File endorsement omitted.]

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed Oct. 23, 1935

Come the defendants jointly, separately and severally, and do not waive their rights or the rights of either of them to have this cause dismissed as set forth in the motion to dismiss, and reserving those rights the defendants jointly, separately and severally for answer to the bill of complaint state as follows:

1st. For answer to the first paragraph of the bill of complaint the defendants admit the averments of said paragraph.

2nd. For answer to the second paragraph of the bill of complaint the defendants admit the averments of said paragraph, except that the defendants aver and state that they are not the only officials of the State of Alabama charged with the administration, enforcement and execution of the excise tax laws therein referred to, but the defendants aver and state that the constitution and laws of the State of Alabama provide that the Governor shall take care that the laws be faithfully executed; that the President and associate members of the State Tax Commission of Alabama are appointed by the Governor, and are subject to his direction, supervision and control, and that the Honorable Bibb Graves as Governor of the State of Alabama is a necessary and indispensable party to this suit, but is not joined as a defendant herein.

3rd. For answer to the third paragraph of the bill of complaint the defendants say that the averments of the said bill of complaint are so indefinite and uncertain that

the defendants cannot say therefrom what part of the matters and amounts in controversy are properly cognizable [fol. 57] by this Court in this proceeding, and the defendants therefore deny that the amount involved in this suit exclusive of interest and costs exceeds the sum or value of $3,000.00 and demand strict proof thereof.

4th. For answer to the fourth paragraph of the bill of complaint the defendants say that the allegations of said paragraph being conclusions of law and not statements of fact, the defendants neither admit nor deny the same.

5th. For answer to the fifth paragraph of the bill of complaint the defendants admit that the several statutes or acts of the Legislature referred to in said paragraph were duly enacted by the Legislature of the State of Alabama.

6th. For answer to the sixth paragraph of the bill of complaint the defendants admit that since 1927 the plaintiff has been and is now engaged in the business of buying and selling gasoline and other liquid motor fuels commonly used in internal combustion engines in the State of Alabama, and that the plaintiff's predecessor in title was engaged in the like business in said State for many years. The defendants admit that the plaintiff has a large amount of money invested in plant and equipment at its various places of business in the State of Alabama for the conduct of its said business. Whether such amount is over one million dollars or not the defendants are not informed, and, therefore, neither admit nor deny, nor are the defendants informed as to the plaintiff's intentions for the future conduct of its said business. The defendants aver and state that the plaintiff is also engaged in the business of a "storer" of gasoline as defined in the gasoline excise tax acts of the State of Alabama; that as therein defined the term "storer" includes any person who ships or causes to be shipped or receives gasoline into the State of Alabama in any quantity and stores the same in any manner, and withdraws or uses the same for any purpose, and said gasoline excise tax acts further provide that the said excise taxes shall apply to persons storing gasoline and distributing the same or allowing the same to be withdrawn from storage whether such withdrawals be for sale or other use, and defendants aver that the plaintiff is a

storer of gasoline and is liable under the acts for the taxes levied thereby, and that plaintiff's purpose in storing such gasoline and withdrawing the same from storage is immaterial as affecting its liability for the taxes levied by the [fol. 58] said several acts.

7th. For answer to the seventh paragraph of the bill of complaint, the defendants admit that the plaintiff has sold and delivered in Alabama large quantities of gasoline to the United States or to its departments or agencies, but the defendants are not informed as to the quantities of gasoline which the plaintiff has sold and delivered in Alabama to the United States or to any particular department or agency, nor whether any particular department or agency to which the plaintiff may have sold gasoline was a proper and constitutional means for the performance of the governmental functions of the United States, or that the use of such gasoline was a necessary means for the performance of such governmental functions. The defendants demand strict proof of each of said matters and things.

The defendants admit that the United States has paid or agreed to pay certain prices for certain of the gasoline sold to it, or to its departments or agencies, but the defendants deny that said prices did not include or take into consideration the taxes imposed by said gasoline excise tax laws, or the liability of the plaintiff therefor, and the defendants further deny the materiality of such allegations, and aver and state that the prices agreed upon between the plaintiff and the United States, or its departments or agencies were mere matters of agreement between them and cannot directly or indirectly affect plaintiff's liability for taxes lawfully imposed.

Defendants deny that all of said gasoline in the amount of 281,254 gallons, sold or delivered to the United States or its agencies within the State of Alabama during the past five years, was withdrawn from storage in Alabama, as defined by the several statutes referred to in the Bill of Complaint, for the purpose at the time of such withdrawal of making delivery to the United States or for the purpose of sale to the United States, but on the contrary the defendants are informed and believe, and upon such information and belief aver that, in keeping with the plaintiff's established method of handling and distributing gaso-

line, all of said gasoline so sold and delivered in Alabama [fol. 59] to the United States or its agencies had been in each instance already stored and withdrawn from storage in Alabama one or more times prior to any such actual sale and delivery to the United States, or before any identifiable part of the mass of plaintiff's gasoline then on hand was ear-marked or set aside for delivery pursuant to a sale actually made, and that the proper excise tax with respect thereto had already accrued and plaintiff's liability therefor had become fixed. Defendants deny the materiality in this regard of the actual use or sale in which the gasoline is involved after its storage and withdrawal. Defendants deny that it is impossible to deliver gasoline in Alabama without storing the same, and withdrawing it from storage in the manner contemplated by the said statutes of Alabama, and deny that the act of withdrawal from storage is a necessary constituent or integral element of every sale thereof, but on the contrary the defendants aver that the act which calls said statutes into operation and fixes the liability of plaintiff to the tax is the storage of gasoline in Alabama, the amount of tax being measured by the amount withdrawn therefrom, and that both the acts of storage and withdrawal are accomplished and completed prior to the designation or devotion of any particular gasoline to any sale or use, and the plaintiff cannot escape or defeat the liability to the tax which has already accrued thereby by claiming that after the storage and withdrawal thereof the gasoline was in fact sold or used in a particular manner. Defendants aver that the plaintiff has not been threatened with criminal prosecution, revocation of license or imposition of any penalty with regard to any of its past transactions, either by the State Tax Commission, or other lawful authority of the State of Alabama.

[fol. 60] The defendants admit that the plaintiff has made monthly reports to the State Tax Commission of Alabama containing information as to its sales and withdrawals from storage of gasoline. The defendants admit that on, to-wit, March 22nd, 1923, Hon. Harwell G. Davis, then Attorney General of Alabama, rendered an opinion upholding the right of the State of Alabama to collect the gasoline excise tax provided by the Act of the Legislature of Alabama approved February 10th, 1923 (General Acts of Alabama of 1923, page 36) measured by the sale of gasoline

to the United States, or an agency or instrumentality thereof, a copy of which said opinion is hereby attached, marked Exhibit "A" and made a part hereof, that thereafter the plaintiff's predecessor in title and other companies like situated paid the said gasoline excise tax without any deduction or exemption on account of gasoline sold to the United States, or its departments, or agencies, and while such practice was continuing, the Legislature of Alabama enacted the statutes referred to in the Bill of Complaint as the Act approved August 27th, 1927 (General Acts of Alabama of 1927, page 326), and the Act approved January 25th, 1927 (General Acts of Alabama of 1927, page 16). Thereafter on, to-wit, May 14th, 1928 the Supreme Court of the United States in the case of Panhandle Oil Company v. State of Mississippi, 277 U. S. 218, 72 L. Ed. 857, held that the statute of the State of Mississippi imposing an "excise tax of one cent per gallon upon the sale of gasoline" was beyond the constitutional powers of the State Legislature insofar as it applied to gasoline sold to the United States. Thereafter the Attorney General of Alabama rendered the opinion dated August 22nd, 1928, a copy of which is attached as Exhibit "F" to the plaintiff's Bill of Complaint. The defendants further admit that the Attorney General of Alabama wrote to the Honorable John H. Sargent, Attorney General of the United States, the letter dated November 22nd, 1928, a copy of which is attached as Exhibit "G" to the plaintiff's Bill of Complaint. The defendants further admit that in the collection of said gasoline excise taxes the officials of the State of Alabama conformed to the said opinions of the State Attorney General until after the Court of Appeals of the United States for the Fifth Circuit had on, to-wit, November 15th, 1933, in the case of Pan American Petroleum Corporation v. State of Alabama, 67 Fed. (2nd) [fol. 61] 590, construed the Act of the Alabama Legislature approved August 27th, 1927 (General Acts of Alabama of 1927, page 326) as follows:

"Appellant contends that the tax accrues only upon the use within the State of gasoline. In our opinion it is payable upon the withdrawal of gasoline from storage within the State, because by the very language of the statute the

tax imposed applies to dealers, distributors and storers, the moment they withdraw it from storage, whether the withdrawal be for sale or other use. It hardly can be assumed in view of this language that the Legislature intended to forego the tax if only the purchaser of gasoline intended to use it in another State, and at the same time insist upon the tax if the purchaser intended to use the gasoline within the State. That a state has the power to levy an excise tax upon the withdrawal of gasoline from storage regardless of the use to which it is put, and even though it be consumed in the generation of motive power for carrying on interstate commerce, is settled by the decision of the Supreme Court in Edelman v. Boeing Air Transport, 289 U. S. 249, 53 S. Ct. 591, 77 L. Ed. 1155. * * * It is to be conceded that an excise tax on the sales of gasoline is inoperative as to sales made to the United States, either directly or indirectly through one of its departments, for government use. Panhandle Oil Co. v. State of Mississippi, 277 U. S. 218, 48 S. Ct. 451, 72 L. Ed. 857, 56 A. L. R. 583. There a sale of gasoline was made direct to the United States for the use of the coast guard and a government hospital. No doubt the ruling would have been the same if the sales had been made directly to these instrumentalities of the government, for then also the United States would have been the real purchaser. But the tax here is not on the sale but is on the withdrawal of the gasoline."

And even thereafter the officials of the State of Alabama continued to conform to the said opinions of the State Attorney General until after the Supreme Court of the State of Alabama, the highest judicial tribunal of said State, in an opinion on which the last rehearing was denied on January 18th, 1934, in the case of State of Alabama v. City of Montgomery, 228 Ala. 93, 151 So. 856, had construed the several gasoline excise tax acts then in force and effect in the State of Alabama, as follows:

"The act first mentioned, Gen. Acts. 1923, p. 36 levies a two cent tax on every distributor and retail dealer in gasoline for every gallon sold in this State. It defines a 'distributor' as including any person who shall engage in the selling of gasoline by wholesale in domestic trade, and a 'retail dealer' as including any person who is a distrib-

utor who also engages in the sale of gasoline in broken quantities.

Its provisions therefore do not show that the city is liable for a tax there described.

The act next mentioned, Gen. Acts 1927, p. 326, amends the first so that the tax is also levied upon a storer of gasoline, in addition to a distributor and retail dealer, and defines a 'storer' as including any person who ships gasoline into this state in tank quantities and stores and withdraws the same for any purpose.

The Act of January 25, 1927 (Gen. Acts 1927, p. 16) is essentially the same as the last above mentioned in levying the tax. Such is also the Act of July 27, 1931 (pages 859, 860), and of November 5, 1932, Ex. Sess. (page 314).

* * *

There is a clear distinction between (1) an excise tax [fol. 62] upon the business, occupation, or privilege of owning, storing and withdrawing gasoline, imposed not only for revenue but also because it is a dangerous explosive, and within the police power of the state, and (2) a tax upon the separate acts of the owner in taking his property out of storage for his own use; for this is a property tax. This distinction is clearly defined in Dawson v. Kentucky Dist. Co., 255 U. S. 288, 41 S. Ct. 272, 65 L. Ed. 638.

It is also shown that the latter is a property tax, though called an excise, and must be controlled by the Constitution insofar as it affects that character of tax rather than an excise. Its designation as an excise or license tax is not conclusive. The cases generally give effect to such distinction and look into its true nature to determine whether there is a prohibition in the Constitution. Sheip & Co. v. Amos, 100 Fla. 863, 130 So. 699, Foster, etc. Co. v. Graham, 154 Tenn. 412, 285 S. W. 570, 47 A. L. R. 971; Bowman v. Continental Oil Co. 256 U. S. 642, 41 S. Ct. 606, 65 L. Ed. 1139; Hart Refineries v. Harman, 278 U. S. 499, 49 S. Ct. 188, 73 L. Ed. 475; the Texas Co. v. Brown, 258 U. S. 466, 42 S. Ct. 375, 66 L. Ed. 721.

It is, of course, conceded by all that if it is a tax on the property or an essential element of its ownership, and not on an occupation or for a privilege, it is in violation of Section 91 of the Constitution (of Alabama). The right of the State to tax a City as any other corporation except

as prohibited or limited by the Constitution is not questioned. Van Brocklin, v. Anderson, 117 U. S. 151, 6 S. Ct. 670, 29 L. Ed. 845.

The acts in question impose a tax upon a storer as well as a distributor or retail dealer. We think this is true though it is not due until it is withdrawn from storage, and is measured by the amount so withdrawn rather than the amount placed in storage. True, it may leak and waste out of storage or explode, and thereby and to that extent no tax is payable; but the whole of the acts taken together show, we think, that the purpose is to impose the tax on the storage, though measured by the amount withdrawn, and then it becomes due to be paid.

Since the privilege of storing is the basis of the tax, and for that purpose an excise may be levied, it is immaterial to what use it is put after it is withdrawn from storage. Crockett v. Salt Lake County, 72 Utah 377, 270 P. 142, 60 A. L. R. 867."

The defendants admit that thereafter on, to-wit, June 17th, 1935, Thomas E. Skinner, Special Agent of the State Tax Commission of Alabama, sent to the plaintiff the telegram copied in the seventh paragraph of the plaintiff's Bill of Complaint. Defendants aver that the said Thomas E. Skinner was not authorized to demand of the plaintiff the penalty mentioned in such telegram, nor was he authorized to demand payment by check payable to his order individually. Defendants further admit that on July 5th, 1935, the Attorney General of Alabama rendered an opinion to the State Tax Commission, a copy of which is attached as Exhibit "H" to the plaintiff's Bill of Complaint. After the said construction of said gasoline excise tax acts by the Court of Appeals of the United States for the Fifth Circuit, and by the Supreme Court of the State of Alabama, and even after the last mentioned opinion of the Attorney General of Alabama, the several gasoline excise tax acts then in force and effect and referred to in the plaintiff's Bill of Complaint were superseded by the Revenue Act approved July 10th, 1935, the pertinent parts of [fol. 63] which are attached as Exhibit "E" to the plaintiff's Bill of Complaint.

The defendants admit that the State Tax Commission wrote to the plaintiff the letter dated August 30th, 1935

which is copied in the seventh paragraph of the plaintiff's bill of complaint, and the defendants aver that as stated in said letter, the plaintiff had already been furnished with a copy of the said opinion of the State Attorney General of date July 5, 1935, and that it was the purpose of said letter to request the plaintiff to conform to the holdings of said opinion, that when construed in connection with the Attorney General's opinion to which it refers, said letter does not make demand for any taxes on account of sales made to the United States, and that to remove any possible misapprehension of the meaning and intent of said letter, the State Tax Commission of Alabama on, to-wit, the 10th day of October, 1935 forwarded to the plaintiff and other oil companies similarly situated an explanatory letter as follows:

"10 October, 1935.

The Texas Company, Atlanta, Georgia.

GENTLEMEN:

"Under date of August 30, 1935, I wrote you as follows: 'Under an opinion issued by the Attorney General's Department, dated July 5, the State Tax Commission can not permit deductions from gasoline sales by reason of gallonage sold to the United States Government or Federal Agencies. Under this opinion the tax applies to all sales and withdrawals made in this State.

You will, therefore, please add to your August sales such deductions as you may have made when preparing your returns, covering July sales and remit the tax to this Department along with tax for your August sales, on or before September 20. As you will recall, the Gasoline Department of this Commission advised you under date of July 9, of the above mentioned opinion stating, 'This is for your information and guidance.'

Please bear this in mind when preparing your returns in the future as no allowance can be made by reason of sales to the Federal Government.

The above refers only to those companies which have been making sales to Federal Agencies and deducting such sales from the total number of gallons on which the tax is computed.'

It has come to my knowledge that certain inferences or conclusions had been drawn from the language of this let-

ter not intended thereby to be conveyed. The letter referred to the opinion of the Attorney General of date of July 5, 1935, and was intended to be read along therewith, and it was not intended by said letter to make any claim or demand for taxes other than authorized or held payable by said opinion. The purpose of the letter quoted above was formally to advise you that in keeping with the opinion above referred to and the opinion of the Supreme Court [fol. 64] of Alabama in the case of State of Alabama v. City of Montgomery, 151 Sou. 856, that you as a refiner or storer of gasoline in the State of Alabama as defined in the various gasoline acts are required to compute and pay the excise tax levied thereby on the amount of gasoline stored in the State of Alabama, measured by the amount withdrawn from storage.

As you know, the tax does not apply to shipments in interstate commerce. Nor is the Commission concerned with the use to which the gasoline is put after its withdrawal from storage.

Yours very truly, State Tax Commission, by Henry S. Long, President."

8th. For answer to the eighth paragraph of the Bill of Complaint the defendants admit that since May 14th, 1928 the plaintiff has sold large quantities of gasoline to the United States or its departments or agencies, but defendants deny that the gasoline sold or delivered to the United States or its departments or agencies within the State of Alabama was withdrawn from storage in Alabama as defined by the several statutes referred to in the Bill of Complaint for the purpose at the time of such withdrawal of making delivery to the United States, or for the purpose of sale to the United States and the defendants are informed and believe, and upon such information and belief aver that the method of handling and distributing said gasoline has heretofore been set forth in the seventh paragraph of this answer, and as averred in said paragraph the defendants deny the materiality of the actual use or sale in which the gasoline is involved after its storage and withdrawal therefrom.

The defendants further aver that if the plaintiff has, since May 14, 1928, the date of the decision of the Supreme Court of the United States in Panhandle Oil Company v.

State of Mississippi, ex rel, R. H. Knox, Attorney General, relied upon said decision as an authority which justified it in not paying to the State of Alabama any of said taxes imposed under said acts on account of withdrawals from storage of gasoline sold to the United States, or in not including the amount of said excise taxes in its calculation of the purchase price of sales made to the United States, that the plaintiff has so acted at its own risk, and such conduct of the plaintiff should not prevent the defendants from collecting taxes lawfully imposed.

The defendants admit that the United States and its departments or agencies are, from time to time, buying gaso- [fol. 65] line from the plaintiff and other oil companies, but the defendants deny that the United States, or any of its departments or agencies, have requested or will request the plaintiff to store gasoline in the State of Alabama, or that any such request would be material to the issues involved in this suit.

The defendants expressly deny that it would be impossible or at all impracticable for the United States to carry on and transact its necessary and important governmental functions in Alabama without having gasoline withdrawn from storage in the State and sold and delivered to it at various places therein. The defendants aver that it is not at all impossible for the United States to receive delivery of such gasoline from tank cars or in other methods in interstate commerce, and without said gasoline having been stored in the State of Alabama, or that it would be entirely practicable for the United States itself or through its departments or agencies to store such gasoline as it required to carry on and transact its governmental functions. The defendants are not informed of the plaintiff's intentions as to the future conduct of its business, but the defendants aver that the plaintiff's intention to continue to offer to sell, and to sell gasoline to the United States can have no effect in preventing the defendants from collecting taxes lawfully imposed. The defendants deny that in all future situations the plaintiff will be unable to deliver gasoline to the United States without first withdrawing it from storage, and the defendants aver that withdrawal from storage in the State of Alabama is not a necessary preliminary to the delivery of gasoline to the United States in said State.

The defendants deny that the United States through its departments and agencies is making or will continue to make requests that plaintiff and other persons engaged in the business of selling or distributing gasoline in Alabama make bids or offers to sell to it gasoline to be withdrawn from storage in Alabama, and the defendants aver that it is not material to the United States or to its departments or agencies whether the gasoline delivered to it in Alabama has been stored in said State or not.

The defendants admit that they will continue to make [fol. 66] claims and demands for excise taxes on the storage of gasoline in the State of Alabama lawfully imposed by the Alabama statutes, and measured by the amounts of gasoline withdrawn from storage, whether such withdrawals be for sale or for any other use or purpose, but the defendants deny that they have demanded or intend to demand any penalties of the plaintiff or of other oil companies similarly situated.

The defendants deny that as to any future transactions by the plaintiff with the United States under which the first withdrawal of gasoline from storage in the State of Alabama will be for the purpose of selling and delivering such gasoline to the United States the amount of the claim for such excise taxes will exceed $3,000.00.

The defendants deny that the burden of the excise taxes on the storage of gasoline or on gasoline withdrawn from storage will inevitably be passed on to the buyer of said gasoline, and defendants aver that "whether the burden of any tax paid by the seller is actually passed on to the buyer depends upon considerations so various and complex as to preclude the assumption a priori that any particular tax at any particular time is passed on. In some conditions of the market the burden remains with the seller, or even may be shifted back from the seller to the producer (or refiner) by the reduction of the producer's (or refiner's) price, rather than forward to the consumer by an increase of the seller's price."

The defendants aver, however, that if it be assumed that the plaintiff is correct in stating that both the plaintiff and all other parties withdrawing from storage gasoline for the [fol. 67] purpose of selling same to the United States will add to their price for such commodity the excise tax imposed by said gasoline excise tax act if such tax is legally

due on such transaction, that then the plaintiff is placed at no disadvantage in competing with other sellers of gasoline in the State of Alabama, and the only party who would be injured by the future operation of said gasoline excise tax acts would be the United States and not this plaintiff, and the United States does not complain in this suit.

The defendants deny that the necessary and inevitable operation of the gasoline excise tax acts of the State of Alabama will place any direct tax burden on the United States, or will directly retard, impede or burden the execution by the United States of its constitutional powers to carry on its governmental functions in the State of Alabama.

9th. For answer to the ninth paragraph of said Bill of Complaint the defendants admit that Section 11 of the Act approved February 10th, 1923 as amended by an Act approved August 27th, 1927 is correctly copied in the ninth paragraph of the plaintiff's Bill of Complaint, but the defendants aver that said section and any other similar provisions contained in other Acts imposing gasoline excise taxes in the State of Alabama have been superseded by Schedules 156.14 and 156.15 of Section 348 of the 1935 Revenue Act approved July 10th, 1935, which said schedules are set forth as a part of Exhibit "E" attached to the plaintiff's Bill of Complaint and to which reference is hereby made.

The defendants admit that Sections 6 and 7 of the Act of the Alabama Legislature approved October 5th, 1932, General Acts of Alabama of 1932, page 57, are correctly copied in the ninth paragraph of the plaintiff's Bill of Complaint, but defendants deny that they have threatened the plaintiff with any penalties or criminal prosecution, or the imposition of any such penalties or that the institution of any such criminal prosecution is in any way imminent.

10th. For answer to the tenth paragraph of the Bill of Complaint, the defendants deny that the said gasoline excise tax acts are unconstitutional, void, discriminatory or offensive or repugnant to the Constitution of the United States of America, in any respect or for any reason.

[fol. 68] 11th. For answer to the eleventh paragraph of said Bill of Complaint, the defendants deny that the plaintiff has no adequate remedy at law for the redress of the

wrongs or grievances complained of in its Bill of Complaint.

The defendants specifically deny:

(a) That the plaintiff has been subjected or threatened with subjection to any penalties, or that the imposition of any such penalties is imminent.

(b) That the plaintiff has been called on or will be called on for any taxes on account of sales of gasoline or other liquid motor fuels by it in Alabama to the United States.

(c) That the plaintiff has been subjected or threatened with subjection to any criminal prosecution and fines or penalties imposed by said Acts, or that any such criminal prosecution, fines or penalties are imminent.

(d) That the plaintiff has been subjected or threatened with subjection to the revocation by the State Tax Commission of its license to sell, distribute or withdraw from storage gasoline or other petroleum products in the State of Alabama, or that any such revocation is imminent.

(e) That the defendants have demanded of the plaintiff the payment of any illegal taxes or that the plaintiff has no adequate remedy at law to test the legality of such taxes.

(f) That the taxes demanded by the defendants from the plaintiff are in any way illegal taxes.

(g) That the plaintiff will have to institute a multiplicity of suits against the State of Alabama for the recovery of any illegal taxes claimed or demanded by the defendants.

(h) That the plaintiff will have to institute a multiplicity of suits against each of the sixty-seven counties in the State of Alabama for the recovery of any illegal taxes collected by the State Tax Commission and distributed to such Counties.

(i) That the right of the plaintiff to recover any illegal taxes paid by the plaintiff to the State Tax Commission is doubtful.

Wherefore, the defendants deny that the plaintiff is en- [fol. 69] titled to an interlocutory injunction, or to any permanent injunction as prayed in the plaintiff's Bill of Com-

plaint, or to any other or further relief, and the defendants pray that they may be hence dismissed with their reasonable costs and charges.

Albert A. Carmichael, Attorney General of the State of Alabama; Frontis H. Moore, Asst. Attorney General of the State of Alabama; Peyton Bibb, Spec. Asst. Atty. General of the State of Alabama; Thomas J. Judge, Farley Bldg., Birmingham, Ala.; Richard T. Rives, Montgomery, Alabama, Solicitors for defendants.

[File endorsement omitted.]

[fol. 70] EXHIBIT "A" TO ANSWER

March 22, 1923.

Hon. Joseph John, Assistant United States Attorney, Mobile, Ala.

DEAR SIR:

Replying to your inquiry of the 20th inst., I beg to advise that the Act approved February 10, 1923, requires an excise tax *to be paid by persons selling gasoline in this State.* (Acts of Alabama, First Session 1923, p. 36.) The amount of this tax is measured by the number of gallons sold.

The tax is for the privilege of engaging in that particular business and is not a sales tax collected from and required to be paid by the purchaser of gasoline nor is it a tax imposed on the article itself. In principle, there is no difference between the license tax heretofore required to be paid in this State by operators of filling stations, and the present tax which is measured by the number of gallons sold, both being an excise tax required for the privilege or right to conduct that character of business.

It follows that this is not a tax required to be paid by any agency of the national government and that the party from whom the government agency purchased would not be entitled to a reduction in the amount of privilege tax paid in proportion to the amount sold to such agencies of the national government. In other words, the amount of license tax is measured by the amount of gasoline sold regardless of the person to whom such sale is made.

Whether or not the seller of gasoline includes the amount of this privilege tax in the sale price of the gasoline for the purpose of caring for this particular expense, and whether or not the agencies of the national government are willing to pay a price for gasoline which is sufficient to cover this expense, are matters over which the State has no control.

Yours very truly, Harwell G. Davis, Attorney General.

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO BILL OF COMPLAINT—Filed Oct. 24, 1935

Now comes the plaintiff in the above styled cause, and by leave of Court first had and obtained amends its Bill of Complaint by making as a party thereto Bibb Graves, as Governor of the State of Alabama.

Plaintiff further amends its Complaint by inserting in the second paragraph thereof, just prior to the last sentence contained in said paragraph, the following:

The defendant, Bibb Graves, is Governor of the State of Alabama and as such is required by the Constitution and laws of said State to see that the laws of the State are faithfully executed, and the said members of the said Tax Commission made parties defendant hereto were appointed by said Bibb Graves as said Governor to their respective positions and are subject to his direction, supervision and control.

John S. Coleman, Attorney for Plaintiff, The Texas Company. Bradley, Baldwin, All & White, of Counsel.

We, the undersigned, attorneys of record for the defendants in said cause hereby accept a copy of the foregoing amendment to the Bill of Complaint and waive any further or other service of said amendment to said Bibb Graves, as Governor of the State of Alabama; and also waive any further notice to him of the date set for the hearing of plaintiff's application for the interlocutory injunction as

[fol. 72] prayed in said Bill, which is set for hearing at Montgomery on October 24th, 1935.

A. A. Carmichael, Atty. General; Frontis H. Moore, Asst. Atty. General; Peyton D. Bibb, Asst. Atty. General; R. T. Rives, Thomas J. Judge, Attorneys of Record for Defendants in Above Styled Cause.

[File endorsement omitted.]

[fol. 73] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPEARANCE AND JOINDER OF HON. BIBB GRAVES, AS GOVERNOR—Filed Nov. 2, 1935

Comes the defendant Bibb Graves, as Governor of the State of Alabama and adopts and joins in the motion to dismiss the bill of complaint and the answer filed on behalf of the other defendants to this cause.

A. A. Carmichael, Attorney General; Frontis H. Moore, Asst. Attorney General, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 74] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO SUBMISSION, ETC.—Filed Nov. 2, 1935

This cause having been submitted on the plaintiff's application for an interlocutory injunction as prayed in its bill of complaint and other pleadings filed in said cause upon an agreed statement of facts and certain additional evidence introduced by each of the parties, it is now agreed by and between the plaintiff and the defendants, by and through their respective attorneys of record, that this cause may also be submitted for final decree upon the pleadings and upon the same agreed statement of facts and addi-

tional evidence introduced upon the hearing of plaintiff's application for an interlocutory injunction. This agreement shall not be construed as in any way constituting a waiver by plaintiff of its insistence on its application for the interlocutory injunction as prayed in its bill of complaint.

John S. Coleman, Attorneys of Record for Plaintiff, The Texas Company. Bradley, Baldwin, All & White, of Counsel. A. A. Carmichael, Attorney General; Frontis H. Moore, Assistant Attorney General; Peyton D. Bibb, Assistant Attorney General; Thomas J. Judge, Richard T. Rives, Attorneys for Defendants.

[fol. 75] [File endorsement omitted.]

[fol. 76] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO STATEMENT OF EVIDENCE—Filed Jan. 3, 1936

Before the Honorables J. C. Hutcheson, Circuit Judge, and Robert T. Ervin and Charles B. Kennamer, District Judges, Composing the Court Consisting of Three Judges Under Section 380 of Title 28 of the United States Code Annotated (Judicial Code, Section 266 Amended).

It is hereby stipulated and agreed by and between counsel for plaintiff and defendants in the above styled cause that a full, true and correct statement of the evidence in said cause under Equity Rule 75 consists of the findings of fact made by the Court in this cause, including the written agreed statement of facts and all Exhibits therein referred to and made a part of said findings of fact, and in addition thereto the facts stated in said findings of fact, and further the following written affidavits introduced in evidence by the plaintiff: Affidavits of F. L. Tosch, A. G. Reynolds, S. A. Herbert, D. L. Gilland, L. H. Rogge and Howell Turner, and also the following written affidavits introduced

in evidence by the defendants: Affidavits of A. B. Tucker and Mark L. Tucker.

Albert A. Carmichael, Attorney General of the State of Alabama; Frontis H. Moore, Asst. Atty. General of the State of Alabama; Peyton Bibb, Spec. Asst. Atty. General of the State of Ala.; Thomas J. Judge, Farley Bldg., Birmingham, Ala.; Richard [fol. 77] T. Rives, Montgomery, Alabama; Attorneys for Defendants. John S. Coleman, Birmingham, Ala.; Bradley, Baldwin, All & White, Birmingham, Ala., Attorneys for Plaintiff.

The foregoing stipulation and the statement of evidence as therein stipulated is approved as a true, complete and properly prepared statement of evidence at the trial of this cause, and may be filed in the Clerk's office and become a part of the record.

This the 3rd day of January, 1936.

J. C. Hutcheson, Circuit Judge. Robert T. Erwin, District Judge. Charles B. Kennamer, District Judge.

[File endorsement omitted.]

[fol. 78] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Statement of Evidence

AFFIDAVIT OF F. L. TOSCH—Filed Oct. 24, 1935

STATE OF ALABAMA,
County of ——:

Personally appeared before me, the undersigned authority in and for said County in said State, F. L. Tosch, who, being by me first duly sworn, deposes and says:

I am and have been for the past five years Chief Accountant for the Texas Company at its district office in Atlanta, Georgia, and reside in said City. This is the district office of the Company for several states, including Alabama, Georgia and South Carolina, and the records of said

Company covering its transactions in Alabama are kept there. It is a part of my duties to make reports to the State Tax Commission each month covering sales, distributions and withdrawals from storage of gasoline by my Company in the State of Alabama during the preceding month. These reports are compiled from information forwarded to and kept in my office, and I personally examine and certify to the correctness of such reports.

I have read the agreed statement of facts filed in this cause as evidence on this hearing, including those parts of said statement as to the method my Company has employed in handling through its independent service stations located in Alabama gasoline sold and delivered to the United States or its departments or agencies. In preparing and filing the monthly tax returns or reports to the State Tax Commission above mentioned I have included in the amount of gasoline shown in such reports as having been sold to the United States or its departments or agencies and therefore not to be included in computing the amount of said excise taxes due by the company to the State the quantity of gasoline which was reported by said independent dealers as having been sold and delivered by said independent dealers to the United States or its departments or agencies and identified or evidenced by Federal Tax Exemption Certificates (Standard Form #44) and as further identified by receipts given to said independent dealers by the employees or representatives of the United States or its departments or agencies at the time of each said delivery and sale, which said tax exemption certificates and receipts were delivered by the independent dealers to the Company, and the state excise taxes have not been paid by the company with respect to the gasoline so included and shown in such reports. [fol. 79] Taxes were collected from the independent dealers for the account of all Company gasoline sold and delivered by them for which they did not have said tax exemption certificates, and the amounts so collected were remitted by the Company to the State Tax Commission.

I am familiar with the transactions in Alabama between the Company and the United States, its departments or agencies, since I have been said Chief Accountant, and in none of the said transactions did the Texas Company charge or include in the price received by the Company for the gasoline sold and delivered by it in the State of Alabama to the United States or its departments or agencies any

excise taxes imposed by the State and based on the selling, distribution or withdrawal from storage of gasoline, and the Company has not paid any excise tax to the State of Alabama on account of such transactions. If The Texas Company is required to pay the gasoline taxes imposed by the Gasoline Excise Tax Acts of Alabama on account of sales to the United States or its departments or agencies or on account of gasoline which is withdrawn from storage in Alabama and delivered to the United States or its departments or agencies in the future said Company will add to the price at which it will sell or attempt to sell said gasoline to said parties the amount of such excise taxes in effect on the State of Alabama at the time of such sales or attempts to sell such commodity.

I am informed and believe and upon such information and belief state that the profit which The Texas Company has made on the gasoline sold and delivered in Alabama by it to the United States, its departments or agencies, will not average as much as one cent per gallon.

During the past five years, in addition to the taxes imposed by the State Excise Tax Acts on the sale, distribution or withdrawal from storage of gasoline in Alabama, the Legislature of Alabama has adopted local statutes which authorize certain counties in the State to levy and collect taxes from one cent to three cents per gallon on the sale, distribution or withdrawal from storage of gasoline and other liquid motor fuels within their respective boundaries, and five or more of the counties in the State have imposed or are now imposing such taxes. More than one hundred and sixty incorporated cities and towns in the State have adopted ordinances levying and imposing taxes on the sale, distribution or withdrawal from storage of gasoline within [fol. 80] their respective boundaries, which taxes are in addition to those levied and imposed by the State and by said counties, and amount to from one cent to two cents per gallon. None of said counties and none of said cities and towns have, to the best of my information and knowledge, collected or attempted to collect any of the said excise taxes imposed by them or any of them based on the sale, distribution or withdrawal from storage of gasoline sold and delivered by The Texas Company or by any other Company to the United States or its departments or agencies within their respective boundaries.

On the gasoline which was handled through the independent dealer service stations in the manner set out in the agreed statement of facts, the amount of said excise taxes provided by the Alabama Excise Tax Acts was not included in the price at which said gasoline was sold and delivered to the United States of its said departments or agencies.

I am familiar with the provisions of the contract referred to in Paragraph XIV of the agreed statement of facts, and designated as Exhibit 23. The Company has made an effort to get this contract, or a copy thereof, from the United States Government officials at Washington, and I understand that it is now being forwarded. This contract provides that my Company shall make tank car deliveries f.o.b. Mobile, Alabama, consigned to the Quarter Master United States Army, Fort McClellan, Alabama, and also to make said tank car deliveries f.o.b. Mobile, Alabama, consigned to the Quarter Master United States Army, Maxwell Field, Alabama, and also make deliveries f. o. b. Mobile, Alabama, of gasoline consigned to the Tennessee Valley Authority Wilson Dam, Alabama. Under the terms of these contracts, the Company is obligated to furnish the requirements that each of these agencies or departments of the United States may need or require from October 1, 1935, through December 30, 1935. This contract became effective October 1, 1935, and the Company has already shipped four or five tank cars of gasoline thereunder from Mobile, Alabama, and intends to continue to make deliveries under said contract. The tank cars contain approximately 8,000 gallons of gasoline each.

F. L. Tosch.

Subscribed and sworn to before me this October 24, 1935. Edna M. Jones, Notary Public, Montgomery County, Alabama.

[fol. 81] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF A. G. REYNOLDS—Filed Oct. 24, 1935

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned Notary Public, in and for said State and County, this day personally appeared A. G.

Reynolds, who being by me first duly sworn, deposes and says that he is employed by the Pan American Petroleum Corporation, as its office Manager and Assistant Secretary; that he is familiar with the reports made by the Pan-American Petroleum Corporation, to the Alabama State Tax Commission since January 1, 1930; that Pan American Petroleum Corporation has, since a date prior to January 1, 1930, shown in its reports to the Alabama State Tax Commission, under separate headings, gasoline which was sold in the State of Alabama and gasoline which was withdrawn in the State of Alabama for uses other than for sale, and the Alabama State Tax Commission has not demanded and the Company has not paid, on the basis of withdrawals, any excise tax where the gasoline has been reported as sold, but has only paid a tax on withdrawals of the gasoline in those instances where the gasoline was withdrawn for some uses other than sale. No reports have been made by the Company on gasoline sold or intended for sale until after the title to such gasoline passed from the Company to the purchaser thereof, and no report has ever been made on gasoline withdrawn for uses other than sale until the time such gasoline was actually withdrawn for such other uses.

The Pan American Petroleum Corporation has been advised, from time to time, by the opinions of the Attorney General of the State of Alabama and by the letters and other statements of the Alabama State Tax Commission that the Alabama Excise Tax was not payable on sales made direct by the Pan American Petroleum Corporation, to the United States Government or to the departments or agencies of the United States Government and the Pan American Petroleum Corporation has relied on said opinions, letters and statements and from time to time since the first day of January, 1930 sold to the United States Government, its agencies, or departments, gasoline at a price which did not include the Alabama State excise tax. [fol. 82] Affiant further avers that practically all sales of gasoline made to the United States Government, its agencies or departments, are made under contracts covering the sale of gasoline in a large number of states and said contracts provide that the price of gasoline stipulated therein is the price of said gasoline including all state taxes; that all sales of gasoline made by the Pan American Petroleum Corporation to the United States Government from Jan-

uary 1, 1930 to July 5, 1935 were made at prices which did not include the Alabama Gasoline excise tax; that since the Pan American Petroleum Corporation has been apprised of the opinion of the Attorney General of the State of Alabama dated July 5, 1935, the Pan American Petroleum Corporation has been unable to make any sales of gasoline in the State of Alabama to the United States Government, its agencies or departments at a price which included the State gasoline excise tax and since said date Pan American Petroleum Corporation has made no sales to the United States Government, its agencies or departments in the State of Alabama save such sales as were called for by contracts executed prior to July 5th, 1935.

A. G. Reynolds. O. K. J. S. C.

Sworn to and subscribed before me this the 23rd day of October, 1935. Lloyd J. Cobb, Notary Public. (Seal.)

[File endorsement omitted.]

[fol. 83] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF S. A. HERBERT—Filed Oct. 24, 1935

STATE OF MISSOURI,
City of St. Louis, ss:

Before me, the undersigned Notary Public in and for said State and City, this day personally appeared S. A. Herbert, who, being by me first duly sworn, deposes and says that he is employed by the Shell Petroleum Corporation as its Tax Supervisor; that he is familiar with the reports made by the Shell Petroleum Corporation to the Alabama State Tax Commission since January 1, 1930, that the Shell Petroleum Corporation has, since a date prior to January 1, 1930, shown in its reports to the Alabama State Tax Commission, under separate headings, gasoline which was sold in the State of Alabama and gasoline which was withdrawn in the State of Alabama for uses other than for sale, and the Alabama State Tax Commission has not demanded and the Company has not paid, on the basis of withdrawals, any excise tax where the gasoline has been reported as sold, but has only paid a tax on withdrawals of the gasoline in those instances where the gasoline was

withdrawn for some uses other than sale. No reports have been made by the Company on gasoline sold or intended for sale until after the title to such gasoline passed from the Company to the purchaser thereof, and no report has ever been made on gasoline withdrawn for uses other than sale until the time such gasoline was actually withdrawn for such other uses.

The Shell Petroleum Corporation has been advised, from time to time, by the opinions of the Attorney General of the State of Alabama and by the letters and other statements of the Alabama State Tax Commission that the Alabama excise tax was not payable on sales made direct by [fol. 84] the Shell Petroleum Corporation to the United States Government or to the departments or agencies of the United States Government, and the Shell Petroleum Corporation has relied on said opinions, letters and statements, and from time to time since the first day of January, 1930, sold to the United States Government, its agencies or departments, gasoline at a price which did not include the Alabama State excise tax.

Affiant further avers that practically all sales of gasoline made to the United States Government, its agencies or departments, are made under contracts covering the sale of gasoline in a large number of states and said contracts provide that the price of gasoline stipulated therein is the price of said gasoline excluding all state taxes; that all sales of gasoline made by the Shell Petroleum Corporation to the United States Government from January 1, 1930, to July 5, 1935, were made at prices which did not include the Alabama Gasoline excise tax; that since the Shell Petroleum Corporation has been apprised of the opinion of the Attorney General of the State of Alabama dated July 5, 1935, the Shell Petroleum Corporation has been unable to make any sales of gasoline in the State of Alabama to the United States Government, its agencies or departments at a price which included the State gasoline excise tax.

(Signed) S. A. Herbert, Tax Supervisor.

Sworn to and subscribed before me this 21st day of October, 1935. (Signed) R. R. McGregor, Notary Public. My Commission expires August 9, 1939. (Seal.)

[File endorsement omitted.]

[fol. 85] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF D. L. GILLAND, STATE MANAGER THE PURE OIL COMPANY AND VICE-PRESIDENT OF WOFFORD OIL COMPANY—Filed Oct. 29, 1935

Before me, the undersigned authority in and for said county in said state, personally appeared D. L. Gilland, known to me, who being by me first duly sworn, deposes and says:

That for more than five (5) years next preceding the making of this affidavit he has been connected with the Wofford Oil Company and The Pure Oil Company in the State of Alabama. That he was vice-president in charge of operations of the Wofford Oil Company, and that he is the manager for The Pure Oil Company in the State of Alabama and as such is familiar with the operations of both companies in this state over a period of time for more than five years next preceding the making of this affidavit. That during the summer of 1934 the operations of the Wofford Oil Company in the State of Alabama were taken over by The Pure Oil Company, who owned all of the capital stock of the Wofford Oil Company, and since that time the operations in this state have been carried on as Wofford Oil Division of The Pure Oil Company.

That the business done in this state at the present time and for more than five years next preceding the making of this affidavit has been extensive. The company operates thirty bulk plants, serves between eight hundred and one thousand retail dealers, and its sales per year in the State of Alabama are approximately 20,000,000 gallons of motor fuel and it has a large investment in the State of Alabama. [fol. 86] That prior to the recent ruling of the Attorney General of Alabama that motor fuel withdrawn from storage and sold to the Federal Government or its agencies or instrumentalities was not exempt from the State of Alabama motor fuel tax of six cents per gallon, it had sold to the Federal Government or to its instrumentalities, motor fuel without adding the motor fuel tax to the sales price, relying on prior opinions of the Attorney General of the State of Alabama to the effect that withdrawals from storage of gasoline in this state and sales of same to the Gov-

ernment were not subject to the State gas tax, and that it had secured this business in competition with other oil companies doing business in the State of Alabama, who likewise did not add the State gas tax to the sales price; that the gas tax on sales thus made in the State of Alabama to the Federal Government, according to the contention of the State of Alabama, amounts to approximately $35,000.00, which the State of Alabama now claims the Wofford and Pure Oil Companies are due to the State.

That after receipt of notice from the Attorney General of Alabama that in his opinion withdrawals from storage and sales to the Government of motor fuel was subject to the State gas tax of six cents, it has, in its bids to the Government for its requirement of motor fuel in this state, added the gas tax of six cents, but has secured no further business from the Government; that the State tax on gasoline is largely in excess of the profit on previous sales to the Government; that said tax cannot be absorbed without The Pure and Wofford Oil Company suffering a very substantial loss on the sales, and that it cannot be passed on to the Government as the Government and its instrumentalities refuse to pay the tax; that on sales made to the Government prior to the ruling of the Attorney General to the effect that the gas tax applied to sales to the Government, and which did not include the six cents gas tax imposed by the State of Alabama on the withdrawal and sale of gasoline, its net profits on said sales were not in excess of two (2) cents per gallon.

(Signed) D. L. Gilland.

Sworn to and subscribed before me on this 23rd day of October, 1935. (Signed) Olive Greene, Notary Public.

[File endorsement omitted.]

[fol. 87] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF L. H. ROGGE—Filed Nov. 1, 1935

Before me, Alex W. Swords, a Notary Public in and for the State of Louisiana, Parish of Orleans, personally ap-

peared L. H. Rogge, who is known to me, who being by me first duly sworn, deposes and says that he is Tax Representative of the Gulf Refining Company, a corporation organized under the laws of the State of Texas, the district of affiant including the State of Alabama; that he has been employed in the Tax Department of the said Gulf Refining Company for a period of approximately eight years; that he has personal knowledge of the payment of the gasoline excise taxes required by the State of Alabama on gasoline withdrawn from storage in the State of Alabama and sold to various parties and is familiar with the constructions placed upon such statutes by the State Tax Commission of Alabama and by the Attorney General of Alabama; that during the period from January 1st, 1930, up to the present time, the said Gulf Refining Company has paid to the State of Alabama all gasoline taxes due by it on all gasoline withdrawn from storage in the State of Alabama and sold to various parties in the State of Alabama, with the exception of gasoline sold to the United States Government or to Instrumentalities thereof; that prior to June of this year, 1935, neither the State Tax Commission, the Attorney General of Alabama, nor any other official or representative of the State Tax Commission had ever claimed or contended that the Alabama Gasoline Excise Tax was due and payable on gasoline which was withdrawn from storage and sold to the United States Government or to Instrumentalities thereof; that at all times during the period from January 1st, 1930, down to the present time, no tax has been paid on any withdrawals from storage, when such withdrawals were made as an incident to, or a [fol. 88] constituent part of, a sale, and the gasoline excise tax has been demanded upon, and been paid upon, the sale of such gasoline rather than upon the withdrawal thereof from storage when such withdrawal was a part of the action necessary to be taken in order to make a sale; that the profit which the Gulf Refining Company makes on sales of gasoline to the United States Government or to its Instrumentalities is less than one cent per gallon, and in fact under some contracts now in force between the Gulf Refining Company and the United States Government, the Gulf Refining Company is actually taking a small loss on sales of gasoline to the United States Government; that it is utterly impossible for the oil com-

panies to absorb this gasoline excise tax of six cents per gallon and it is absolutely necessary that this gasoline tax be passed on down to the purchaser; that the United States requires all bids from oil companies for the furnishing of gasoline to the United States to be fixed at a price which does not include any state gasoline excise tax; that in the opinion of affiant it would be impossible for any oil company to obtain a contract to furnish gasoline to the United States or to its Instrumentalities in the State of Alabama unless the Oil Companies are relieved from paying the six cents per gallon gasoline excise tax on such withdrawals from storage for sale to the United States or to its Instrumentalities; and that the effect of the Alabama State Tax Commission collecting this six cents per gallon gasoline excise tax on withdrawals from storage for sale to the United States or to its Instrumentalities in the State of Alabama would be that no sales of gasoline can possibly be made to the United States or to its Instrumentalities in the State of Alabama.

(Signed) L. H. Rogge.

Sworn to and subscribed before me by L. H. Rogge, this 30 day of October, 1935, as witness my hand and Official Seal. (Signed) Alex. W. Swords, Notary Public, Parish of Orleans, Louisiana. (Notarial Seal.)

[File endorsement omitted.]

[fol. 89] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF HOWELL TURNER—Filed Nov. 2, 1935

STATE OF ALABAMA,
Montgomery County:

Before me, Agnes Baggett, a Notary Public in and for the State of Alabama and County of Montgomery, personally appeared Howell Turner, who is known to me, who being by me first duly sworn deposes and says that he is Secretary of State of the State of Alabama and as such is the custodian of and familiar with the Journals of the House of Representatives and of the Senate of the State

of Alabama; that House Bill No. 324, known as the Revenue Bill, was prepared during the recess of the Legislature of Alabama, which recess covered the period from the 8th day of February, 1935, to the 30th day of April, 1935; that as shown by the said Journals the said House Bill No. 324 was introduced in the House of Representatives of the Legislature of Alabama on the 3rd day of May, 1935; that Schedule 159.1 and Schedule 159.2 of Article XIII of Chapter 4 of the said Revenue Bill as originally introduced in the House of Representatives, which schedules are found on pages 367 and 368 of the printed Revenue Bill as introduced, are as follows:

"Schedule 159.1. Every distributor, refiner, retail dealer or storer of gasoline as herein defined shall pay an excise tax of six cents ($0.06) per gallon upon the selling, distributing, storing or withdrawing from storage in this State for any use, gasoline as herein defined, provided, however, that this excise tax shall not be levied on the sale of gasoline in interstate commerce, and provided further, that where the excise tax of six cents ($0.06) per gallon upon the sale, distribution, storage or withdrawal from storage of such gasoline shall have been paid by a distributor, refiner, or by retail dealer or storer, such payment shall be sufficient, the intention being that the tax shall be paid but once."

"Schedule 159.2. The excise tax imposed by Section — hereof shall apply to persons as defined in this Chapter, storing gasoline and distributing the same or allowing the same to be withdrawn from storage whether such withdrawals be for sale or other use; provided that 'sellers' of gasoline and its substitute paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required and refiners, storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions;"

that the said Schedule 159.1 and Schedule 159.2 are identical in form with Schedule 156.1 and Schedule 156.2 of the Revenue Bill as finally passed by the House and Senate and approved by the Governor, with the exception that in Schedule 156.2 of the Revenue Bill as finally passed by the House and Senate and approved by the Governor the

blank space shown on the second line of Schedule 159.2 of this Revenue Bill as originally introduced in the House was filled in by inserting the figure "156.1", this blank having evidently been left in the Revenue Bill as originally introduced in order that the correct number of the section of the Revenue Bill as finally passed could be in-
[fol. 90] serted therein after the different sections and schedules of the Revenue Bill received their final numbering; that the said Revenue Bill, with certain amendments not covering the two sections above set out, was passed by the House on the 12th day of June, 1935, and sent to the Senate; that a substitute was offered in the Senate, not changing the two sections above set out, and passed on the 28th day of June, 1935; that House and Senate Conference Committees were appointed on the 28th day of June, 1935; that the Conference Report on the said Revenue Bill was adopted by both the House and the Senate on the 3rd day of July, 1935; that said Revenue Bill, as amended, said amendments not covering the two sections above set out, was finally read a third time at length and passed by the House and Senate on July 3, 1935; that, while some sections of the Revenue Bill as originally drafted were amended, yet no changes whatever were made in the two gasoline tax sections above referred to with the exception of the filling in of the number of the section hereinabove referred to; and that the said Bill as finally passed was approved by the Governor of Alabama on the 10th day of July, 1935.

(Signed) Howell Turner.

Subscribed and sworn to before me by Howell Turner this 31st day of October, 1935. (Signed) Agnes Baggett, Notary Public, Montgomery County, Alabama. (Notarial Seal.)

[File endorsement omitted.]

[fol. 91] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF A. B. TUCKER—Filed by the Defendants Oct. 24, 1935

STATE OF ALABAMA,
Montgomery County:

Before me the undersigned authority in and for said State and County personally appeared A. B. Tucker, who, being by me first duly sworn, deposes and says: My name is A. B. Tucker. I am Chief Clerk of the Gasoline Department of the State Tax Commission of the State of Alabama and have occupied such position since April 1, 1931. I am familiar with the returns which the Texas Company and other distributors and storers of gasoline have made to the State Tax Commission under the requirements of the several Gasoline Excise Tax Acts of the Legislature of Alabama for such period. It has been my duty throughout this period to inspect and generally supervise the administration and collection of the tax.

At no time during said period did the Texas Company or any other distributor or storer of gasoline in Alabama make or attempt to make or claim any deduction from the amount of excise taxes shown to be due by such reports on account of any sale, delivery or contract of sale or delivery to the State of Alabama.

[fol. 92] The State Tax Commission has uniformly collected the excise tax with respect to all gasoline stored or withdrawn from storage in Alabama for sales to the State or to counties, municipalities or other political subdivisions of the State without allowing any deduction on account of such sales or without any claim having been made for such deduction.

As Chief Clerk, I have charge of the records of the Gasoline Department of the State Tax Commission for a period of approximately four years preceding the period I became Chief Clerk, and so far as such records disclose or as I can determine from the records or letters on file, no allowance or deduction has ever been given the Texas Company or any other distributors or storers of gasoline in Alabama on account of any gasoline stored and withdrawn

from storage in Alabama for sale or delivery to the State of Alabama or any if its political subdivisions.

A. B. Tucker, Affiant.

Sworn to and subscribed before me this the 24th day of October, 1935. Alice Kent Baldwin, Notary Public, Montgomery County, Alabama.

[File endorsement omitted.]

[fol. 93] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF MARK L. TUCKER—Filed by the Defendants Oct. 24, 1935

STATE OF ALABAMA,
Montgomery County:

Personally appeared before me, the undersigned authority in and for said state and county, Mark L. Tucker, who being duly sworn, deposes and says that he was agent of the State Tax Commission for the State of Alabama in charge of the gasoline division during the years 1927 and 1928, and that during the years 1929 and 1930 he was a member of the State Tax Commission of Alabama, and that during the years 1927, 1928 and 1929 and up until the decision of the United States Supreme Court in the case of Panhandle Oil Co. v. Knox, 277 U. S. 218, that all oil and gasoline companies doing business in Alabama paid the excise tax on gasoline without any deduction being made on account of sales of gasoline to the United States or its departments or agencies; that the practice was to pay on withdrawals from storage and that this was the construction of the act by the State Tax Commission and the state authorities during the period hereinabove mentioned.

Mark L. Tucker, Affiant.

Sworn to and subscribed before me this the 24th day of Oct., 1935. Margaret S. Jones, N. P., Montgomery County, Ala.

[fol. 94] [File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

Agreed Statement of Facts—Filed Oct. 24, 1935

It is agreed by and between the plaintiff and the defendants in the above styled cause by and through their respective attorneys of record that the following stipulation of facts shall be and constitute an agreed statment of facts on the hearing of plaintiff's application for an interlocutory injunction in said cause, and that the Court shall consider the same insofar as material as fully and completely as if testified to or introduced as evidence under the ordinary rules of evidence. Either party may introduce additional evidence at said hearing should it desire to do so.

Such stipulation and agreed statement of facts is as follows:

I

The plaintiff, The Texas Company, herein called "Company" is a corporation duly organized and existing under the laws of the State of Delaware and is duly qualified in [fol. 95] accordance with the laws of the State of Alabama to do business in Alabama and has been so qualified and has continuously transacted business in said State since the year 1927. Company's immediate predecessor in title and interest was engaged in said business in the State of Alabama for more than fifteen (15) years immediately preceding the Company and operated under the same corporate name as Company. Company now has and has had continuously since the year 1927, an investment in the State of Alabama in excess of One Million ($1,000,000.00) Dollars in plant property and equipment at its various places of business in said State for the conduct of its business in Alabama. The Company has a substantial investment in property and equipment in each of the sixty-seven (67) counties in the State, but in some counties the investment is larger than in others. The principal business carried on or transacted by the Company in said State is the selling, marketing and delivering of gasoline, kerosene, lubricating oils and other petroleum products. None of

these products are manufactured in the State of Alabama. The largest single commodity dealt in by the Company in said State is gasoline, which is handled in the manner hereinafter stated.

II

The defendant, Albert A. Carmichael, is Attorney General of Alabama and as such is required by the laws of said State to prosecute parties who violate the laws of said State and to institute and maintain on behalf of the State actions, suits and proceedings against those who fail to comply with the laws of the State, imposing or relating to taxes payable to the State. The defendant, Henry S. Long, is President and defendants, John P. Kohn, Sr. and W. W. Ramsey, are associate members of the State Tax Commission of Alabama and as such are required to collect the taxes imposed by the laws of Alabama and payable to said [fol. 96] State and to detect and prosecute or cause to be prosecuted all parties who violate any of said laws or who fail to pay the taxes imposed thereunder. The defendant, Bibb Graves, is Governor of the State of Alabama and as such is required by the Constitution and laws of said State to see that the laws of the State are faithfully executed. The members of the State Tax Commission were appointed by said defendant as Governor and are subject to his direction, supervision and control. All of said defendants have their offices as such State officials in the City of Montgomery, Alabama, and reside in said City.

III

The Acts adopted by the Legislature of Alabama, imposing excise taxes on the sale, distribution, or withdrawal from storage of gasoline and other liquid motor fuels are either correctly set forth in paragraph five (5) of Company's Bill of Complaint, or are referred to in said paragraph and attached as exhibits to said Bill and were or are in effect as stated in said Bill.

IV

Exhibits "F", "G", and "H" to the Bill of Complaint are correct copies of the opinions of the Attorney General's of Alabama and were rendered on the respective dates

shown on such copies. The Attorney General of Alabama also rendered an opinion, dated July 14, 1933, which is hereto attached, marked Exhibit "I" and is made a part hereof, and rendered the opinion dated March 22, 1923, attached to the defendants' answer as Exhibit "A".

V

The telegram dated June 17, 1935 set out in paragraph [fol. 97] seven (7) of the Bill of Complaint as forwarded on said date by Thomas E. Skinner, who was at that time special agent of the State Tax Commission and authorized to send same. Said telegram was received by The Texas Company on the same date that it was forwarded. The letter dated August 30, 1935, set out in paragraph seven (7) of the Bill of Complaint, was forwarded by the State Tax Commission and received by Company as is stated in said paragraph. The letter dated October 10, 1935, set out in paragraph seven (7) of the defendants' answer, was sent by the State Tax Commission and received by Company. The officials representing the State Tax Commission, before the institution of this suit, informed the agents or attorneys of the Company that if the taxes imposed by the Alabama Gasoline Excise Tax Acts were not paid on all gasoline withdrawn from storage in the State of Alabama and sold in said State to the United States, or to its departments or agencies, during a period of the preceding five (5) years, that a suit or suits would be instituted to recover same and that the Company and other oil companies withdrawing from storage in Alabama gasoline and delivering same in said State to the United States, or its departments or agencies, would be required to pay the taxes imposed by said Gasoline Excise Tax Acts on account of such withdrawals, and that if such taxes were not paid the Company and the other oil companies engaged in such transactions would be subjected to the penalties provided in said Acts. Suits were instituted against five (5) of the oil companies selling large quantities of gasoline in the State of Alabama, but no suit was instituted against the Company. These suits were for the recovery of said Excise taxes on account of gasoline withdrawn from storage in Alabama and delivered to the United States, or its departments or agencies, during a period of five (5) years next preceding the date of the institution of the suits. Said suits

[fol. 98] were dismissed by the attorneys representing the State, with the statement that other suits based on the same causes of action would be refiled. The defendants, in their respective official capacities with the State of Alabama, intend to immediately follow the ruling of the Attorney General of Alabama, dated July 3, 1935, and attached to the Bill of Complaint as Exhibit "H" and to collect or attempt to collect from those parties withdrawing from storage in Alabama gasoline and other liquid motor fuels and selling same to the United States, or its said departments or agencies, the taxes held under said opinion to be imposed on said parties on account of said transactions, unless said defendants are enjoined or restrained from doing so by judicial order or decree.

VI

The Company has never manufactured or refined any gasoline within the State of Alabama and since prior to January 1, 1930 all of the gasoline which it has sold or withdrawn from storage in said State was manufactured or refined at its refinery located at Port Arthur, Texas, and then shipped by the Company in its boats or barges to its Terminals located either in the City of Mobile, Alabama, or in the City of Pensacola, Florida, or in the Town of Millville, Florida. These Terminals are located at or near the docks or wharfs located in said cities or town and consist of storage tanks and other facilities for the direct unloading and reception of the gasoline as it comes to the Company's boats or barges from said refinery. After the gasoline was and is received at the Terminals, it was and is shipped either by railroad in tank cars, or in boats to the bulk plants of the Company, or to the customers of the Company located principally in the States of Alabama, Florida, Georgia, Louisiana, and Tennessee, except that the gasoline which is deposited or stored in the bulk plant of the Company located at Mobile, Alabama is transported by means of pipe lines connecting said terminal at Mobile [fol. 99] with said Mobile bulk plant. Company has now and has had during the past five (5) years thirty-six (36) bulk plants located in Alabama, which consist of storage tanks and other facilities for keeping or storing the gasoline

which is to be sold and distributed either through retail service stations or direct to its customers. Such bulk plants are geographically distributed in the State of Alabama and are adjacent to railroad connections so that the gasoline which has been consigned to such plants for said terminals can be easily unloaded from the tank cars to the storage tanks or containers located at such bulk plants. Bulk plants of the Company are located in the State of Alabama as follows:

Bulk Plant	County	Bulk Plant	County
Alexander City	Tallapoosa	Gadsden	Etowah
Anniston	Calhoun	Guntersville	Marshall
Athens	Limestone	Haleyville	Winston
Atmore	Escambia	Huntsville	Madison
Birmingham	Jefferson	Jackson	Clarke
Blocton	Bibb	Linden	Marengo
Brewton	Escambia	Mobile	Mobile
Clanton	Chilton	Montgomery	Montgomery
Cullman	Cullman	Opelika	Lee
Decatur	Morgan	Opp	Covington
Demopolis	Marango	Ozark	Dale
Dothan	Houston	Reform	Pickens
Enterprise	Coffee	Selma	Dallas
Eufaula	Barbour	Sheffield	Colbert
Evergreen	Conecuh	Troy	Pike
Foley	Baldwin	Tuscaloosa	Tuscaloosa
Ft. Deposit	Lowndes	Tuskogee	Macon
Ft. Payne	DeKalb	Winfield	Marion

Since prior to January 1, 1930 Company has either owned, operated or has been interested in the operation of service stations at which gasoline is sold at retail to the public within the State of Alabama as follows:

A—Company Operated Service Stations, which are stations either owned or leased to the Company and are operated by salaried employes of the Company; the title to the gasoline handled through such stations remains in the Company until it is sold and delivered at retail to the Com- [fol. 100] pany's customers.

B—Consignment Service Stations, which are stations originally owned or leased to the Company and later leased or sub-leased by Company to individual operators. These stations are operated under contracts entered into between

the Company and the operator of such stations, under the terms of which contracts all of the gasoline which is delivered by the Company into the tanks or other containers located on the premises of said stations, is owned by the Company until such gasoline is sold at retail to the customers who purchase same. The owners or operators of the Consignment Service Stations never acquire any interest in or title to said gasoline but the title passes direct from the Company to the retail customer. Each owner or operator of such station is paid by the Company a commission on each gallon of gasoline of the Company sold or delivered through the station at which he is located.

C—Independent Dealer Service Stations are stations to which the Company makes deliveries of gasoline into the tanks or containers located on the premises of such stations and the title to such gasoline at the time of such delivery passes from the Company to the owner or operator of such station and the owner or operator then sells and delivers the gasoline at retail to the public.

All of the three (3) classes of service stations above described consist of underground storage tanks and pumps connected therewith and other facilities for the storage and selling of gasoline at retail to the public. All of the gasoline which was and is deposited in the tanks or other containers of the above mentioned retail service stations is first taken from bulk plant stations of the Company and transported by means of tank trucks or tank wagons from such bulk plants and delivered into the tanks or containers located on the retail service station premises.

[fol. 101] VII

During the period from January 1, 1930 through September 22, 1935 the Company withdrew from storage in Alabama and sold and delivered in said State to the United States, or its departments or agencies, 286,639.36 (Two Hundred Eighty-six Thousand Six Hundred Thirty-nine and Thirty-six One hundredths) gallons of gasoline. The deliveries made, respectively from the terminal of the Company at Mobile, Alabama, from Company Bulk Station Plants located in Alabama, from Company Operated Service Stations, from Company Consignment Service Stations and from Independent Dealer Service Stations during each of said calendar years were as follows:

Year	Mobile Terminal	Bulk Station Plants	Company Operated Service Stations	Consignment Service Stations	Independent Dealer Service Stations
1930.....	.....	14540	1008	.....	.....
1931.....	.....	17925	140	2247½	854
1932.....	.....	7933	....	4097	1446½
1933.....	.....	32459	....	4320½	640
1934.....	76221	87720	15	429	4618¼
1935.....	.....	14107	77	2234	3840
	.....	.....	....	.....	9767.61*
Total.....	76221	174684	1240	13328	21166.36

A schedule showing the amount of gasoline withdrawn from storage by the Company in Alabama and delivered in Alabama to the United States, or to its departments or agencies, during each calendar year from January 1, 1930 through September 22, 1935 is hereto attached, marked Exhibit "2" and is made a part hereof.

The gasoline described above as delivered from the Terminal of the Company at Mobile, Alabama amounted to Seventy-Six Thousand Two Hundred Twenty-one (76,221) gallons and was delivered FOB railroad cars at Mobile, Alabama, consigned to the United States Army, Quartermaster Corps, Fort McClellan, Alabama. All of this gasoline had previously been shipped in boats or barges from Port Arthur, Texas to the Mobile Terminal and there deposited [fol. 102] or stored in the tanks or containers of the Company at such terminal where it remained until it was withdrawn from storage into tank railroad cars on railroad tracks adjacent to said terminal. The title to said gasoline passed from the Company to the United States Army at the time it was loaded in said railroad tank cars at Mobile, Alabama. The sale and delivery of this gasoline to the United States Army was made under a previous contract which the Company had with the United States Army, copy of which contract is hereto attached marked Exhibit "3" and is made a part hereof.

The One Hundred Seventy-four Thousand Six Hundred Eighty-four (174,684) gallons of gasoline above described as delivered from Bulk Plants in Alabama to the United States, or to the various departments or agencies of the United States, was gasoline which had been originally shipped from the Company's refinery at Port Arthur, Texas in boats or barges of the Company to the Company's Terminals located at either Mobile, Alabama, Pensacola, Florida, or Millville, Florida. After the gasoline arrived at

these terminals it was loaded in railroad tank cars and shipped by railroad direct to the bulk stations in Alabama where it was unloaded and placed in tanks or containers in such bulk stations, except that the gasoline which was delivered from the Mobile Terminal to the Mobile Bulk Plant was transported by means of the aforesaid pipe lines. After the gasoline was delivered and stored in the Company's Bulk Plants in Alabama, it was not withdrawn from storage until placed in the Company's trucks or tank wagons, or in steel barrel containers, and delivered direct to the United States, or its departments or agencies, and the sole purpose of withdrawing such gasoline from the tanks or containers located in the Company's Bulk Plants was to make deliveries of such gasoline to the United States, or its said departments or agencies, under contracts which had previously been entered into between the Company and the [fol. 103] United States, or its departments or agencies. In some instances where the gasoline was withdrawn from storage at the said bulk station plants and loaded on trucks or tank wagons, the tanks on such vehicles contained gasoline to be delivered to parties other than the United States, its departments or agencies. A copy of a written contract entered into between the Company and the United States for the deliveries of said gasoline from said Bulk Plants is hereto attached, marked Exhibit "4" and is made a part hereof. A number of other similar contracts for deliveries of gasoline from bulk station plants, except as to dates and amounts, have been entered into between the Company and the United States since January 1, 1930, and deliveries thereunder by the Company are included in the above mentioned figures. Some of the deliveries from the Bulk Plant stations were made pursuant to previous oral contracts entered into between the Company and the United States, or its departments or agencies.

The One Thousand Two Hundred Forty (1,240) gallons of gasoline above described as being delivered from Company Operated Service Stations and the Thirteen Thousand Three Hundred Twenty-eight (13,328) gallons of gasoline above described as being delivered from Company Consignment Service Stations to the United States, or its departments or agencies, was gasoline which had originally been shipped by the Company's boats or barges from the Company refinery at Port Arthur, Texas, to the Company ter-

minals at Mobile, Alabama; Pensacola, Florida, or Millville, Florida and after its arrival at such terminals it was loaded on railroad cars or in boats and shipped to the various Bulk Station Plants in Alabama where it was unloaded and stored in the Bulk Station Plant tanks or containers, [fol. 104] except that the delivery from the Mobile Terminal to the Mobile Bulk Plant was made by pipe lines in the manner aforesaid. Thereafter, such gasoline was withdrawn from storage at such Bulk Plants and delivered in tank trucks or in tank wagons of the Company to the tanks or containers located on the respective premises of such Company Operated or Company Consignment Service Stations. The representatives or employes of the various United States departments or agencies obtained gasoline from such Service Stations by driving the automobiles, trucks or other vehicles belonging to, or being operated by, such departments or agencies into the Service Stations and requesting the Service Station attendants to fill the fuel tanks attached to such vehicles with the desired amount of gasoline. The Service Station attendants would then withdraw the gasoline from the tanks or containers located on said premises and place the desired quantities in the said fuel tanks. All of such purchasers of gasoline, before making such purchases, presented to the Service Station attendants identification cards or other credentials, showing that they were entitled to purchase such gasoline for the United States, or its departments or agencies, and practically all of the gasoline sold and delivered in this manner was delivered under previous contracts, which the Company had with the United States, or its departments or agencies and the amount of gasoline so delivered would be charged to the United States, or the department or agency, for whose account it was delivered and at the end of each calendar month the United States, or its department or agency would, upon being billed for the gasoline so purchased, pay the purchase price of same to the Company.

The Twenty-one Thousand One Hundred Sixty-six and Thirty-six One Hundredths (21,166.36) gallons of gasoline above described as being delivered through Independent Dealers was handled in the same manner that the gasoline [fol. 105] was handled through Company Operated and Company Consignment Stations until the gasoline was deposited into the tanks or containers located at the Independ-

ent Dealer Stations, at which time title to such gasoline passed to the owner or operator of such Independent Station. When an employe or representative from the United States, its department or agency, drove a vehicle into such Independent Dealer Station, upon his presenting identification card or other credentials showing that he was entitled to purchase gasoline for the United States, or such department or agency, the Independent Dealer would withdraw from storage and place into the fuel tank of such vehicle the desired number of gallons of gasoline and would take from such person a receipt, in duplicate, signed by such person, showing the amount of gasoline so purchased and delivered and when a truck driver employe of the Company would next make deliveries of gasoline to the Independent Dealer at his station in Company trucks from a Bulk Plant of the Company, such truck driver employe would deliver without charge to such Dealer an amount of gasoline equivalent to the gasoline previously delivered by the Independent Dealer to the employe or representative of the United States, or department or agency thereof. The truck driver would then deliver to the accounting department of the Company the receipts showing the amount delivered by the Independent Dealer to the employe or representative of the United States, or its department or agency, and the Independent Dealer would not be charged by the Company with the gasoline so delivered to replace the deliveries made by such Independent Dealer to the United States, its department or agency. The Independent Dealer would then be credited by the Company with the same margin of profit that he would have made if he had made a sale of such gasoline to third parties not connected with the United States. These deliveries were made on a credit basis under arrangements or contracts which the Company had with the [fol. 106] United States, or the said departments or agencies, and at the end of each calendar month the Company would bill the department or agency for whose account the deliveries had been made through such Independent Stations and would attach to the bill so rendered one of the duplicate receipts signed by the employe or representative of the United States, or department or agency thereof, at the time such gasoline was sold and delivered and such bill would be paid to the Company in due course. All of the gasoline, which was originally delivered by the Company to

the owner or operator of an Independent Dealer Station, was billed or charged to such Independent owner or operator, but none of the gasoline which was delivered to such Independent Dealer or operator to replace the gasoline which had been previously delivered by such Independent Operator to the United States Government, or department or agency thereof, in the manner aforesaid was ever billed or charged to said operator. All of said deliveries so made by the Independent Dealers were made under arrangements between the Company and said operators and were made for the account of the Company under contracts which the Company had with the United States or its departments or agencies, and with the understanding that the Company would replace all gasoline so delivered in the manner aforesaid. The Company in its monthly reports to the State Tax Commission included in the amount of gasoline which was shown as delivered and sold to the United States or its departments or agencies during the preceding month the quantity of gasoline which had been handled through the Independent Service Stations in the manner above stated and delivered to the United States or its departments or agencies.

Copies of contracts between the Company and the United States under which deliveries of gasoline were made to the United States, its departments or agencies, from Company Controlled, Company Consignment and Independent Dealer Service Stations are hereto attached, marked Exhibits [fol. 107] "5" and "6" respectively, and are made a part hereof. Other deliveries from such Service Stations were made under contracts of similar import between the same or other officials of the United States, except the dates of duration and the quantities of gasoline to be delivered thereunder were different.

VIII

In every instance where gasoline was sold and delivered by the Company to the United States or a department or agency thereof in the State of Alabama, the Company received and filed in its office a Tax Exemption Certificate showing the date of the purchase, the amount of gasoline purchased and the department or agency purchasing same and the Certificate was signed by the person making the purchase. A copy of a Tax Exemption Certificate actually

executed and now in the files of the Company is hereto attached, marked Exhibit "7", and is made a part hereof. All of the other Tax Exemption Certificates are in substantially the same form as the one attached hereto, except that appropriate blanks were filled in to properly identify the transaction which it evidenced. These certificates were prepared and printed by the United States and were and are furnished by the United States to each of its departments or agencies authorized to purchase gasoline or other petroleum products and have been and are now in use in every state in the United States.

The United States has since prior to January 1, 1930 required the Company to furnish it with a receipted invoice showing the amount of gasoline delivered on each occasion, the date of such delivery and the department or agency for whose account it was delivered and that such receipts be signed by the employe or representative of the United States or said department or agency actually receiving de- [fol. 108] livery of such gasoline and his title or the capacity in which he received same. For every sale and delivery of gasoline to the United States, or department or agency thereof in Alabama by the Company, except the shipments which were made from the Mobile Terminal to the United States Army, Fort McClellan, Alabama, above mentioned, the Company has received from the person actually receiving the gasoline such a form of receipt acknowledging that he has received the said gasoline. Duplicate copies of all receipts, following the month in which they were received by the Company, were forwarded by the Company to the United States or its departments or agencies, and the Company has been paid for all of the gasoline described in said receipts except that delivered within the past thirty or sixty days. The duplicate copies which were forwarded by the Company to the United States or to its departments or agencies were copies containing the original signatures of the person actually receipting for said gasoline.

IX

The Company had, since the date of the decision of the United States Supreme Court in the case of Panhandle Oil Company vs. State of Mississippi, 277 U. S. 318, filed with the State Tax Commission at Montgomery, Alabama on or before the 20th day of each calendar month a report on

forms furnished by the State Tax Commission, showing the amount of gasoline on which the Company was liable for a tax on account of transactions within the State of Alabama during the preceding month and in separate columns or spaces showing the amount of gasoline which had been sold in the State of Alabama to the United States or its departments or agencies. During said period neither the State of Alabama nor any of its officials or representatives have ever prior to the month of June, 1935 made claim or demand that the Company was liable to the State of Ala- [fol. 109] bama for the said excise taxes on account of sales of gasoline to or withdrawals from storage of gasoline which subsequently was sold to the United States or its departments or agencies and the Company has not since said decision paid or offered to pay to the State of Alabama any taxes on account of any said transactions. Copies of the various forms of reports or returns made to the State Tax Commission on forms furnished to the Company by it since January 1, 1930 are attached hereto and made a part hereof. The form for the reports to be filed with the State Tax Commission by oil companies doing business in Alabama during said period was changed. Exhibit "8" is the form first furnished by the State Tax Commission during the said period to the Company. Exhibit "9" is the next form furnished which was first used by the Company covering transactions during the month of July, 1931. The form next furnished by the State Tax Commission to the Company was first used by the Company in September, 1931 and is hereto attached, marked Exhibit "10". The form next furnished by the State Tax Commission to the Company was for the month of January, 1932, a copy of which form is hereto attached, marked Exhibit "11". The next form furnished by the State Tax Commission was for the month of July, 1934 and a copy of this form is hereto attached, marked Exhibit "12". The next form was for the month of January, 1935 and a copy of this form is hereto attached, marked Exhibit "13", and this is the form now being used by the Company. The State Tax Commission also furnished its Form GA 2½, which was to be attached to the above mentioned returns beginning June, 1932. A copy of this form is hereto attached, marked Exhibit "14" and is made a part hereof. Copies of returns made by the Company and attached hereto as Exhibits are the actual

returns made by the Company for the months indicated thereon, and the Company, during the months that each form was in effect, filed similar reports with the State Tax Commission, except that the blanks in said forms were [fol. 110] properly filled in to correctly show and identify the sales and transactions of the Company during the months which they respectively covered.

The auditors of the State Tax Commission have since prior to January 1, 1930, made audits of the books and records of the Company, and since the Tax Exemption Certificates have been in use since 1930 have also examined each of such certificates. These examinations were made at approximate three-month intervals and neither the auditors nor any other person connected with the State of Alabama have ever made claim, since the decision by the United States Supreme Court in said Panhandle Oil Company case until June, 1935, that the Company owed the State of Alabama any taxes on account of the transactions with the United States or its departments or agencies as evidenced by such Tax Exemption Certificates.

The State Tax Commission has advised the Company and other oil companies doing business in Alabama from time to time that independent retail dealers who bought their gasoline in Alabama on a basis of "tax paid" could not accept the Tax Exemption Certificates and that the State intended to claim that the excise tax on all gasoline handled in this manner was legally due and payable to the State. A copy of letter dated August 2, 1933 from A. B. Tucker, Chief Clerk, Gasoline Tax Department, State Tax Commission, addressed to Mr. F. L. Tosch, The Texas Company, Atlanta, Georgia, is hereto attached, marked Exhibit "15" and is made a part hereof. A copy of a communication date January 24, 1934 from the State Tax Commission which was received by the Company, is hereto attached, marked Exhibit "16". A copy of letter from A. B. Tucker, Chief Clerk, Gasoline Tax Department, State Tax Commission, to Mr. F. L. Tosch, Chief Accountant, The Texas Company, Atlanta, Georgia, dated January 29, 1934, is hereto attached, marked Exhibit "17" and made a part hereof. A [fol. 111] copy of letter from A. B. Tucker, Chief Clerk, Gasoline Tax Department, State Tax Commission, addressed to The Texas Company, Atlanta, Georgia, dated November 15, 1934, is hereto attached, marked Exhibit "18" and made

a part hereof. A copy of letter from A. B. Tucker, Chief Clerk, Gasoline Tax Department, The State Tax Commission, to F. L. Tosch, Chief Accountant, The Texas Company, Atlanta, Georgia, dated January 8, 1935, is hereto attached, marked Exhibit "19" and made a part hereof. A copy of letter from A. B. Tucker, Chief Clerk, Gasoline Tax Department, State Tax Commission, to F. L. Tosch, Chief Accountant, The Texas Company, Atlanta, Georgia, dated January 15, 1935, is hereto attached, marked Exhibit "20" and made a part hereof. A copy of letter dated March 11, 1935 from A. B. Tucker, Chief Clerk, Gasoline Tax Department, State Tax Commission, to H. L. Sessions, The Texas Company, Mobile, Alabama, is hereto attached, marked Exhibit "21" and made a part hereof. A copy of communication dated July 9, 1935, from A. B. Tucker, Chief Clerk, Gasoline Tax Department, State Tax Commission and forwarded to The Texas Company is hereto attached, marked Exhibit "22" and made a part hereof.

X

The Company has since the effective date of the 1927 Excise Tax Acts shown in its reports under separate headings gasoline which was sold in the State of Alabama and gasoline which was withdrawn in the State of Alabama for use other than for sale. No reports were made by the Company on the gasoline sold or intended for sale until the time that the title to such gasoline actually passed from [fol. 112] the Company to the purchaser thereof, and no report has even been made on gasoline withdrawn for use other than for sale until the time that such gasoline was actually withdrawn for such other use. This has been the uniform practice employed by other oil companies selling and withdrawing from storage gasoline within the State of Alabama and the State Tax Commission with knowledge of such practice has never prior to June, 1935 insisted that the transactions in the State of Alabama be reported in any other manner or the tax paid on account of such transactions in any different way than in the manner herein stated and as appears from the forms of returns hereto attached. The Company has paid all said excise taxes due to be paid to the State of Alabama with respect to all gasoline withdrawn from storage in Alabama for use other than for sale and with respect to all gasoline sold in said State, except that it has not paid any taxes with respect to withdrawals

from storage of gasoline sold to the United States or its departments or agencies, or with respect to sales of gasoline to such parties, since the decision in said Panhandle Oil Company case.

XI

Gasoline is a highly volatile and inflammable liquid substance and it is necessary to keep same in closed metal tanks or containers. When gasoline of the seller is stored in storage tanks or containers located in Alabama, before said gasoline can be delivered into storage tanks or containers or in the fuel tanks of vehicles of purchasers thereof, it is necessary to first withdraw such gasoline from storage from the tanks or containers of the seller.

XII

A number of the agencies or departments of the United States purchasing gasoline in the State of Alabama are transacting the business of such agencies or departments in every county in the State of Alabama, but such agencies or [fol. 113] departments do not have storage tanks or containers or other facilities for the storing of gasoline in all of such counties or at such points where gasoline may from time to time be needed by such agencies or departments. Due to the lack of such storage facilities, such departments or agencies purchase or otherwise obtain gasoline at such points where they have not storage facilities, from retail service stations or from other third parties which may be located at the point where such gasoline is needed or desired by such agencies or departments.

XIII

The Company is not and has not stored gasoline in the State of Alabama, except the gasoline stored by the Company in its tanks, containers and other equipment and sold to persons or parties in Alabama, or sold in interstate commerce from points in Alabama to other states, or except the gasoline stored by the Company for use in its own trucks or other vehicles used in its operations in the State of Alabama. The Company has never stored gasoline in the State of Alabama for the account of other parties.

XIV

The Company has entered into a contract with the Treasury Department, Procurement Division, Washington, D. C.,

designated as Contract TPS-8068, Region No. 2, under the terms of which the Company is require to make tank car deliveries FOB Mobile, Alabama, to the Quartermaster, United States Army, Fort McClellan, Alabama, and also to make deliveries of gasoline FOB Mobile, Alabama, consigned to the Quartermaster, United States Army, Maxwell Field, Alabama, and also deliveries of gasoline FOB Mobile, Alabama, to Tennessee Valley Authority, Wilson Dam, Alabama. This contract covers the requirements that each of these agencies or departments of the United States may re-
[fol. 114] quire from the period from October 1, 1935 thru December 30, 1935. A copy of this contract is hereto attached, marked Exibit "23" and is made a part hereof.

The Company has also entered into a contract with the United States Department of the Interior, which contract is designated as No. IS-1959, under the terms of which the Company is required to make deliveries thru retail service stations to the United States Department of the Interior, the Administrative Division of the Bureau of Reclamation, the Public Works Administration, the Bureau of Indian Affairs, and such other bureaus of the Department of the Interior as may from time to time desire to purchase under said contract or the requirements which said departments or agencies of the United States may need or desire to purchase in Alabama during the period from October 1, 1935 thru June 30, 1936. A copy of this contract is hereto attached, marked Exhibit "24" and is made a part hereof.

Executed in duplicate on this the 23rd day of October, 1935.

John S. Coleman, Attorneys of Record for Plaintiff, The Texas Company. A. A. Carmichael, Atty. General; Frontis H. Moore, Asst. Atty. General; Peyton Bibb, Thomas J. Judge, Richard L. Rives, Attorneys of Record for Defendants. Bradley, Baldwin, All & White, of Counsel.

[fol. 115] Copy

EXHIBIT 1

July 14, 1933.

Hon. Page S. Bunker, State Forester, Capitol:

Under the authority of the Pan Handle Oil case, gasoline purchased by the government to be used in emergency conservation work is not subject to tax.

Opinion by Assistant Attorney General Moore.

DEAR SIR:

I have your letter of June 27th in which you state:

"Under the provisions of the Act of Congress entitled 'An Act for the relief of unemployment through the performance of useful public work, and for other purposes' approved March 31, 1933, a Federal agency known as the Emergency Conservation Work has been established with headquarters at Washington, D. C. The activities of this Federal Bureau are carried on in Alabama in cooperation with the State Commission of Forestry. In connection with the Emergency Conservation Work in this State the Federal Government uses certain gasoline motor vehicles. The manner in which such vehicles are employed is fourfold as follows:

"1. Vehicles owned by the Federal Government and used exclusively upon Government work.

"2. Vehicles leased by the United States from private owners for strictly official Federal use.

"3. Vehicles owned by the State but loaned to the Federal Government by the State Commission of Forestry for strictly official Federal use.

"4. Cars privately owned by Federal employees and used on strictly official Federal work at a fixed rate of reimbursement per mile.

[fol. 116] "Your opinion is requested as to whether the provisions of State laws as to the levying and payment of State and County taxes on gasoline, oil and grease apply to the vehicles engaged exclusively in Federal work under any or all of the above four captions."

In my opinion the answer to each of your questions is dependent on whether or not the gasoline is bought by the Government and used for governmental purposes. If this be true, under the authority of the Pan Handle Oil case, I am of the opinion that it is not subject to tax. If the gasoline is purchased by anyone other than the Government, I am of the opinion that it is subject to the tax.

Yours very truly, Thomas E. Knight, Jr., Attorney General.

[fol. 117]

EXHIBIT "2"

Departments	Mobile Terminal	Delivered Bulk Stations	From Service Stations	Consignments	Independent Dealers	Total
Unidentified	.....	4259*	197	.....	616½	.....
U. S. Shipping Board	.....	500	....	.....	.....	.....
Alabama Transient Bureau	.....	7265	....	.....	304	.....
Alabama Relief Administration	.....	3100	....	.....	.....	.....
U. S. Consular Service	.....	.....	....	9	.....	.....
U. S. Marine Hospital #13	.....	.....	855	20	.....	.....
Mississippi Warrior Service	.....	4005	....	.....	.....	.....
U. S. Public Health Service	.....	1655	....	11	.....	.....
U. S. Veterans Hospital #91	.....	2080	....	.....	.....	.....
U. S. Coast Guard Service	.....	10095	....	.....	316	.....
U. S. Naval Station—Pensacola	.....	55	....	.....	.....	.....
R. O. T. C. Unit—Alabama Polytechnic Institute	.....	300	....	.....	.....	.....
U. S. Engineers Service	.....	6036	....	.....	.....	.....
U. S. Collector of Customs	.....	.....	96	.....	.....	.....
U. S. Department of Commerce	.....	6983	15	4287½	1157½	.....
U. S. Lighthouse Service	.....	3710	....	.....	.....	.....
U. S. Observation Squadron	.....	720	....	.....	.....	.....
Nitrate Plant #2	.....	3000	....	.....	.....	.....
U. S. Department of Interior	.....	19	....	502	3319¾	.....
U. S. War Department	76221	44136	....	2717½	4493.36	.....
U. S. Department of Agriculture	.....	.....	77	605½	1037	.....
Finance Officer—Maxwell Field	.....	5815	....	.....	.....	.....
U. S. Department of Justice	.....	.....	....	1469½	4885	.....
U. S. Navy Department	.....	.....	....	3030	379	.....
U. S. Quartermaster—Maxwell Field	.....	3750	....	.....	.....	.....
Federal Barge Line	.....	960	....	.....	.....	.....
U. S. Treasury Department	.....	10140	....	96	2727½	.....
U. S. Post Office Department	.....	.....	....	384	86	.....
U. S. Veterans Administration	.....	.....	....	25	8	.....
Public Works Administration	.....	.....	....	.....	1310¾	.....
U. S. Naval Reserve	.....	50	....	.....	.....	.....
U. S. Veterans Bureau	.....	.....	....	46	16	.....
U. S. Government—Washington, D. C.	.....	125	....	.....	.....	.....
Civilian Works Administration	.....	19633	....	.....	480	.....
Civilian Conservation Corps	.....	1470	....	.....	.....	.....
Emergency Conservation Works	.....	11735	....	.....	5	.....
Tennessee Valley Authority	.....	21787	....	125	25	.....
	76221	174684	1240	13328	21166.36	286639.36

* Deliveries made to U. S. Government at Mobile, Tuscaloosa and Birmingham but records have been destroyed.

Exhibit No. 7

Marine Hospital,
Mobile, Alabama

CERTIFICATE — U. S. GOVERNMENT MOTOR FUELS TAX EXEMPTION — T- 2688

Date Dec 31, 1934

I certify that I have this —— purchased 30 gallons of Gasolene (Gasoline, benzol, kerosene, etc.) at 10½ per gallon, and —— quarts of ———— (Alcohol, oil, etc.) at ———— per quart, exclusive of State or local tax, for use on official business of the United States Government, from The Texas Co. (Name and location of dealer) Alabama (State), and the quantity purchased was actually delivered to automobile and truck (Automobile, truck, motorcycle, airplane, or boat) bearing license plate number ———— or delivered at Hospital Marine Hospital, Mobile, Alabama under my direct supervision.

U. S. TREASURY DEPARTMENT
(Branch of the service for which purchased)

P. L. Collier
(Name of purchaser)

Senior Surgeon
(Title)

Medical Officer in Charge

Where dealers will not accept this certificate in lieu of the State or local tax, receipts must be obtained in duplicate.

ORIGINAL.—To be retained by dealer, who will accept this only when purchaser is identified by Standard Form No. 45, Identification Card.

Standard Form No. 44—Approved by the President, June 13, 1930. 10—1953

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Form B-2 Received

Exhibit No. 8

Form B-2 Received

STATE OF ALABAMA

THE STATE TAX COMMISSION

MONTHLY GASOLINE TAX RETURN

Name THE TEXAS COMPANY

Address ATLANTA, GEORGIA.

Month of MARCH 1931. 19 - 1930

INSTRUCTIONS

1. This return must be filed with the State Tax Commission, at Montgomery, not later than the 20th of the month next succeeding the month in which sales and withdrawals are made.

2. Sales and withdrawals must be entered separately on lines 5 and 7 of statement opposite.

3. This return is required of all gasoline sold or withdrawn from storage in Alabama, except that it is not required from filling stations when such stations purchase gasoline from distributors in this State or from distributors outside the State when such distributors report and pay tax on sales in Alabama.

TO BE ACCOUNTED FOR	Gallons of Gasoline
1. On hand beginning of month	1,140,894
2. Received during month	1,632,499
3. Gain, if any, from temperature change	
4.	
Total to be Accounted For	2,773,393
ACCOUNTED FOR	
5. Sales for month within State of Alabama	1,516,576
6. Sales for month outside State of Alabama	2,825
7. Withdrawn from storage in Alabama for any purpose except sale	6,595
8. Loss, if any, from temperature change	7,642
9. Sold to U.S. Government. No Tax	560
10. On hand at end of month	1,239,195
Total Accounted For	2,773,393

CALCULATION OF TAX

1,516,576 Gallons sold within State (line 5 above) @ 4 cents per gallon	$ 60,663.04
6,595 Gallons withdrawn for use (line 7 above) @ 4 cents per gallon	263.80
1,523,171	$60,926.84
Check enclosed for $ 60,919.00 in payment total tax	
Less 196 Gals. Returned to Stock	7.84
THIS QUESTION MUST BE ANSWERED	$60,919.00

Are sales and withdrawals given in lines 5 and 7 above made from more than one place of business? Yes

If so, give list of places where sold and number of gallons sold at each place.

Location of Business.	Gallons Sold and Withdrawn
See attached	

(If this space insufficient, attach typewritten list of places of business to this return)

GEORGIA AFFIDAVIT

State of ~~Alabama~~

FULTON County.

I, F.L.Tooch, Chief Accountant
(Name of person making affidavit)

the _____ of the THE TEXAS COMPANY
(This line to be filled in when return made by corporation)

whose address is ATLANTA, GEORGIA
first being duly sworn, depose and say upon oath that the statement here submitted is full, true and correct to the best of my knowledge and belief.

Chief Accountant

Subscribed and sworn to before me this the 13th. day of April, 1931. Fulton County State of Georgia, 1930

Notary Public

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Form B-6
Received

Exhibit No. 9

STATE OF ALABAMA

THE STATE TAX COMMISSION

EXHIBIT 9

MONTHLY GASOLINE TAX RETURN

Name THE TEXAS COMP NY

Address ATL NTA, GEORGIA.

Month of JULY 1, 193

INSTRUCTIONS

1. This return must be filed with the State Tax Commission, at Montgomery, not later than the 20th of the month next succeeding the month in which sales and withdrawals are made.

2. Sales and withdrawals must be entered separately on lines 5 and 7 of statement opposite.

3. This return is required of all gasoline sold or withdrawn from storage in Alabama, except that it is not required from filling stations when such stations purchase gasoline from distributors in this State or from distributors outside the State when such distributors report and pay tax on sales in Alabama.

TO BE ACCOU. TED FOR	Gallons of Gasoline
1. On hand beginning of month	1,296,151
2. Received during month	1,775,751
3. Gain, if any, from temperature change	24,696
4.	
Total to be Accounted For	3,096,578
ACCOUNTED FOR	
5. Sales for month within State of Alabama	1,795,130
6. Sales for month outside State of Alabama	3,300
7. Withdrawn from storage in Alabama for any purpose except sale	6,318
8. Loss, if any, from temperature change Leakage & Evaporation	6,870½
9. Sold to U.S.Government.Non Taxable	1,025
10. On hand at end of month	1,284,654½
Total Accounted For	3,096,578

CALCULATION OF TAX

1,795,130 Gallons sold within State (line 5 above) @ 4 cents per gallon	$ 71,805.20
6,318 Gallons withdrawn for use (line 7 above) @ 4 cents per gallon	252.72
Check enclosed for $ in payment total tax	72,057.92
Returned to Stock 326 Gals.) @	13.04
THIS QUESTION MUST BE ANSWERED	72,044.88

Are sales and withdrawals given in lines 5 and 7 above made from more than one place of business? Yes

If so, give list of places where sold and number of gallons sold at each place.

Location of Business.	Gallons Sold and Withdrawn
See attached	

(If this space insufficient, attach typewritten list of places of business to this return)

AFFIDAVIT

State of Alabama, GEORGIA
FULTON County.

I, F.L.Tooke Chief Accountant
(Name of person making affidavit)

the of the The Texas Company
(This line to be filled in when return made by corporation)

whose address is Atlanta, Georgia
first being duly sworn, depose and say upon oath that the statement here submitted is full, true and correct to the best of my knowledge and belief.

Chief Accountant

Subscribed and sworn to before me this the 19th, day of August 1931 193

Notary Public in and for the State of Alabama.
Fulton County State of Georgia.

BROWN PRINTING CO., MONTGOMERY, 1930

Form Revised C. 8-31-2M

Exhibit No. 10

STATE OF ALABAMA

THE STATE TAX COMMISSION

EXHIBIT 10

MONTHLY GASOLINE TAX RETURN

Name THE TEXAS COMPANY

Address ATLANTA, GEORGIA.

Month of SEPTEMBER 1931

INSTRUCTIONS

1. This return must be filed with the State Tax Commission, at Montgomery, not later than the 20th of the month next succeeding the month in which sales and withdrawals are made.

2. Sales and withdrawals must be entered separately on lines 5 and 7 of statement opposite.

3. This return is required of all gasoline sold or withdrawn from storage in Alabama, except that it is not required from filling stations when such stations purchase gasoline from distributors in this State or from distributors outside the State when such distributors report and pay tax on sales in Alabama.

TO BE ACCOUNTED FOR	Gallons of Gasoline
1. On hand beginning of month	1,377,944
2. Received during month	1,593,157
3. Gain, if any, from temperature change	19,733
4. " from adjustments	496
Total to be Accounted For	2,991,330
ACCOUNTED FOR	
Loss from adjustments	19,724
5. Sales for month within State of Alabama	1,641,571½
6. Sales for month outside State of Alabama	2,101
7. Withdrawn from storage in Alabama for any purpose except sale	5,469
8. ~~Loss, theory, from temperature change.~~ Transferred	10,465
9. Sales to U.S.Government	22,884
10. On hand at end of month	1,289,115½
Total Accounted For	2,991,330

CALCULATION OF TAX

1,641,571½	Gallons sold within State (line 5 above) @ 5 cents per gallon	$ 82,078.58
5,469	Gallons withdrawn for use (line 7 above) @ 5 cents per gallon	273.45
	Check enclosed for $ ____ in payment total tax	$82,352.03
	Less Case, returned	33.61
		$82,318.42

THIS QUESTION MUST BE ANSWERED

Are sales and withdrawals given in lines 5 and 7 above made from more than one place of business? Yes

If so, give list of places where sold and number of gallons sold at each place. See attached

LOCATION OF BUSINESS

	Gallons Sold & Withdrawn		Gallons Sold & Withdrawn

(If this space insufficient, attach typewritten list of places of business to this return)

RECEIPTS

Date	Car No.	Gallons	Date	Car No.	Gallons

(If this space insufficient, attach typewritten list of shipments.)

AFFIDAVIT

GEORGIA

State of ~~Alabama~~
FULTON County.

I, F. L. Tosch, Chief Accountant
(Name of person making affidavit)

the ____ of the THE TEXAS COMPANY, whose address is
(This line to be filled in when return made by corporation)

ATLANTA, GEORGIA, first being duly sworn, depose and says upon oath that the statement here submitted is full, true and correct to the best of my knowledge and belief.

Chief Accountant

Subscribed and sworn to before me this the 19th. day of October 1931

Notary Public in and for ~~the State of Alabama~~
Fulton County State of Georgia.

* 824 Gals. @ 4¢ per Gal. 4.96 ~~193 Gals. @ 5¢ per Gal. 8.65~~ = 33.61

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Revised Form

Exhibit No. 11

12-31-10M

STATE OF ALABAMA

EXHIBIT //

THE STATE TAX COMMISSION

MONTHLY GASOLINE TAX RETURN

Name THE TEXAS COMPANY

Address ATLANTA GEORGIA.

Month of JANUARY 1932

Mail this to GASOLINE DEPARTMENT, State Tax Commission, Montgomery, Ala.

INSTRUCTIONS

1. This return must be filed with the State Tax Commission, at Montgomery, not later than the 20th of the month next succeeding the month in which sales and withdrawals are made.

2. Sales and withdrawals must be entered separately on lines 5 and 7 of statement opposite.

3. This return is required of all gasoline sold or withdrawn from storage in Alabama, except that it is not required from filling stations when such stations purchase gasoline from distributors in this State or from distributors outside the State when such distributors report and pay tax on sales in Alabama.

4. Line 6 must be filled out by all dealers or distributors carrying stock of gasoline in Alabama, giving name of state into which sales are made.

5. No credit will be allowed on sales to U. S. Government unless proof is submitted that such sales were for strictly Governmental Instrumentalities.

TO BE ACCOUNTED FOR	Gallons of Gasoline
1. On hand beginning of month	1,191,797
2. Received during month	1,344,303
3. Gain, if any, from temperature change	780
4.	
Total to be Accounted For	2,536,880
ACCOUNTED FOR	
5. Sales for month within State of Alabama	1,268,269
6. Sales for month in State of Ga. Fla. 1500 Sales non-taxable	3,894 35,200
7. Withdrawn from storage in Alabama for any purpose except sale	5,146½
8. Loss, if any, from temperature change	609
9. Transferred 2,477 Adjustments 9904	12,581½
10. On hand at end of month	1,211,380
Total Accounted For	2,536,880

CALCULATION OF TAX	
1,268,269 Gallons sold within State (line 5 above) @ 5 cents per gallon	$63,413.45
5,146½ Gallons withdrawn for use (line 7 above) @ 5 cents per gallon	257.33
Check enclosed for $63,634.53 in payment total tax	$63,670.78
Less 688 Gals. 5¢ per Gal. returned	34.25
	$63,636.53

THIS QUESTION MUST BE ANSWERED

Are sales and withdrawals given in lines 5 and 7 above made from more than one place of business? Yes

If so, give list of places where sold and number of gallons sold at each place. See attached

LOCATION OF BUSINESS

	Gallons Sold & Withdrawn		Gallons Sold & Withdrawn

(If this space insufficient, attach typewritten list of places of business to this return)

RECEIPTS

Date	Car No.	Gallons	Date	Car No.	Gallons

(If this space insufficient, attach typewritten list of shipments.)

GEORGIA

AFFIDAVIT

State of ~~Alabama~~, FULTON County.

I, F. L. Tosch, Chief Accountant (Name of person making affidavit),

~~the~~ of the THE TEXAS COMPANY (This line to be filled in when return made by corporation), whose address is ATLANTA GEORGIA., first being duly sworn, depose and says upon oath that the statement here submitted is full, true and correct to the best of my knowledge and belief.

Chief Accountant

Subscribed and sworn to before me this the 19th day of Feb. 1932 193

Notary Public in and for ~~the State of Alabama~~

Fulton County State of Georgia.

BROWN PRINTING CO., MONTGOMERY, ALA.

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Revised Form [illegible]

Exhibit No. 12

1-54-5M

STATE OF ALABAMA

THE STATE TAX COMMISSION

EXHIBIT 12

MONTHLY GASOLINE TAX RETURN

Name THE TEXAS COMPANY

Address Atlanta, Georgia

Month of July, 193 4

Mail this to GASOLINE DEPARTMENT, State Tax Commission, Montgomery, Ala.

INSTRUCTIONS

1. This return must be filed with the State Tax Commission, at Montgomery, not later than the 20th of the month next succeeding the month in which sales and withdrawals are made.

2. This return is required on all gasoline sold or withdrawn from storage in Alabama, except that it is not required from filling stations when such stations purchase gasoline from distributors in this State or from distributors outside the State when such distributors report and pay tax on sales in Alabama.

3. Line 6 must be filled out by all dealers or distributors carrying stock of gasoline in Alabama, giving name of state into which sales are made.

4. No credit will be allowed on sales to U. S. Government unless proof is submitted that such sales were for strictly Governmental Instrumentalities.

TO BE ACCOUNTED FOR	Gallons of Gasoline
1. On hand beginning of month	675126
2. Received during month [illegible] total	1486068
[illegible]	
3. Gain, if any, from temperature change	19067
4.	
Total to be Accounted For	2180261
Sold to U. S. Government.....	34807
ACCOUNTED FOR	
5. Sales and withdrawals for month within State of Alabama	1497928
6. Sales for month within State of Ga. & Fla.	11698
7. [illegible]	2630
8. [illegible]	7977
9. Leakage & Evaporation	10410
10. On hand at end of month	695295
Total Accounted For	2180261

1497928 Less 150 gals. ret'd to Stock.

CALCULATION OF TAX

1497778 Gallons sold within State and withdrawn for use during month @ 6c per gallon $ [illegible]

Check enclosed for $ 89,866.68 in payment of total tax

THIS QUESTION MUST BE ANSWERED

Are sales and withdrawals given in lines 5 and 7 above made from more than one place of business? Yes

If so, give list of places where sold and number of gallons sold at each place.

LOCATION OF BUSINESS

	Gallons Sold & Withdrawn		Gallons Sold & Withdrawn
	See Attached.		

(If this space insufficient, attach typewritten list of places of business to this return)

DETAILED RECEIPTS

Date	Car No.	Gallons	Date	Car No.	Gallons

(If this space insufficient, attach typewritten list of shipments.)

AFFIDAVIT

State of GEORGIA
FULTON County.

I, J. T. Sessions
(Name of person making affidavit)

the Asst. Chief Accountant of the THE TEXAS COMPANY, whose address is
(This line to be filled in when return made by corporation)

Atlanta, Georgia, first being duly sworn, depose and says upon oath that the statement here submitted is full, true and correct to the best of my knowledge and belief.

Asst. Chief Accountant

Subscribed and sworn to before me this the 20th day of Aug. 193 4

Notary Public [illegible]

BROWN PRINTING CO., MONTGOMERY, ALA., 1934

Revised Form Ga-1

Exhibit No. 13

STATE OF ALABAMA

EXHIBIT 13

THE STATE TAX COMMISSION

MONTHLY GASOLINE TAX RETURN

Name THE TEXAS COMPANY

Address Atlanta, Georgia

Month of January 1935

Mail this to GASOLINE DEPARTMENT, State Tax Commission, Montgomery, Ala.

INSTRUCTIONS

1. This return must be filed with the State Tax Commission, at Montgomery, not later than the 20th of the month next succeeding the month in which sales and withdrawals are made.

2. This return is required on all gasoline sold or withdrawn from storage in Alabama, except that it is not required from filling stations when such stations purchase gasoline from distributors in this State or from distributors outside the State when such distributors report and pay tax on sales in Alabama.

3. Line 6 must be filled out by all dealers or distributors carrying stock of gasoline in Alabama, giving name of state into which sales are made.

4. No credit will be allowed on sales to U. S. Government unless proof is submitted that such sales were for strictly Governamental Instrumentalities.

TO BE ACCOUNTED FOR	Gallons of Gasoline
1. On hand beginning of month	675,500½
2. Received during month taxable	1,510,686
Received during month tax paid	
3. Gain, if any, from temperature change	576
4.	
Total to be Accounted For	2,186,762½
ACCOUNTED FOR	
5. Sales and withdrawals for month within State of Alabama	1,384,448½
6. Sales for month in State of Ga. & Fla.	12,214
7. Sales to others less tax	108,844
8. Loss, if any, from temperature change	1,828
9. Sales to U. S. Government / Leakage and evaporation	5,735 / 2,181
10. On hand at end of month	672,499
Total Accounted For	2,186,762½

1,384,448½ plus 1,223 error in recap

CALCULATION OF TAX

1,385,671½ Gallons sold within State and withdrawn for use during month @ 6c per gallon $ 83,140.29

Check enclosed for $ 83,140.29 in payment of total tax

THIS QUESTION MUST BE ANSWERED

Are sales and withdrawals given in lines 5 and 7 above made from more than one place of business? yes

If so, give list of places where sold and number of gallons sold at each place.

LOCATION OF BUSINESS

	Gallons Sold & Withdrawn		Gallons Sold & Withdrawn
ATTACHED			

(If this space insufficient, attach typewritten list of places of business to this return)

DETAILED RECEIPTS

Date	Car No.	Gallons	Date	Car No.	Gallons
	ATTACHED				

(If this space insufficient, attach typewritten list of shipments.)

AFFIDAVIT

State of GEORGIA

FULTON County.

I, F. L. Torch, Chief Accountant
(Name of person making affidavit)

~~Xx~~ of ~~Xx~~ THE TEXAS COMPANY, whose address is
(This line to be filled in when return made by corporation)

Atlanta, Georgia, first being duly sworn, depose and says upon oath that the statement here submitted is full, true and correct to the best of my knowledge and belief.

Chief Accountant

Subscribed and sworn to before me this the 19th day of February 1935

Notary Public

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Exhibit No. 14

DETAILED GASOLINE REPORT BY THE TEXAS COMPANY EXHIBIT 14

For Month of January, 1935 Atlanta, Georgia,

Location of Distribution or Service Stations	On Hand First of Month	Sold Within State	Sold Without State	Withdrawn For Other Use	On Hand End of Month
162 Alexander City	18653	31119			12071
171 Anniston	27610	75339		244	34901
174 Athens	9006	25190		18	16120
178 Atmore	14852	20324	1646		9303
239 Birmingham	63364	216920		1574	75453
267 Brewton	9208	9355	3800	65	12122
268 Clanton	9468	24784		33	10192
269 Cullman	16634	26500		10	14371
270 Decatur	18218	33578			22784
272 Demopolis	11622	14515		31	15436
273 Dothan	23542	30897		96½	24440½
279 Enterprise	14514	19223			11136
282 Eufaula	10537	18190	3318	11	12466
283 Evergreen	11725	11879½		20	7507½
285 Blocton	8218	11820		5	5075
298 Ft. Deposit	17326	14171½		30½	11204
308 Ft. Payne	17954	13574	3450	15	17069
309 Foley	7111	22658			9338
310 Gadsden	29382	72422		31	33944
311 Guntersville	17162	25236			16208
312 Haleyville	15598	6994		4	16700
313 Huntsville	30024	43934		22	25363
319 Jackson	7253	10560		6	6839
320 Linden	14784	8630			14259
321 Mobile	9215	78542		748	17265
325 Montgomery	57665	129800		787	31952
328 Opelika	13870	32728		50	13409
329 Opp	11788	26284		30	9853
330 Ozark	16663	15857			16956
331 Reform	16872	13600			11408
332 Selma	25375	33528		40	24174
334 Sheffield	17858	37505		32	14449
335 Troy	19174	48489		37	20733
337 Tuscaloosa	19085	50283		35	32225
339 Tuskegee	14890	17802		11	13222
340 Winfield	8001	14007		16	10126
360 Birmingport	39955				31329
386 Decatur SS#2	1326½	3607½		33	1096
D/O Sales		40522			
Mobile Terminal		45		245	
New Orleans District		5132			
Interstate from:					
16 Cedartown, Ga.		286			
38 Columbus, Ga.		27839			
77 LaGrange, Ga.		3694			
137 West Point, Ga.		14805			
Totals	675500½ ✓	1380168½ ✓	12214 ✓	4280 ✓	672499

[fol. 126] Copy

EXHIBIT "15"

State of Alabama

The State Tax Commission

Montgomery

(Alabama Great Seal.)

Aug. 2, 1933.

Mr. F. L. Tosch, The Texas Co., Atlanta, Ga.

DEAR SIR:

Govt. Sales

In reply to your letter dated Aug. 1 will say that I ruled early in the Summer that the State gasoline and lubricating oil tax will apply on sales made to other than U. S. Government Agencies, and the exception could not be allowed in any case except where the purchaser presented standard form #44. This, even, only applies where the sale is made by a tax-paying dealer, such as The Texas Co., Gulf, Standard or some licensed independent who pays tax to this department. Sales made by independent retail dealers or authorized dealers who buy stock "tax paid" can not accept these certificates.

The Attorney General's Department has issued an opinion holding that "if the gasoline is bought by the Government and used for governmental purposes" it is exempt.

It appears from the ruling you quote as to exemption from Federal tax that the same might apply to the State tax. I will investigate this phase further.

I am taking the position that the gasoline tax money is used for the same purpose set out in the plans for forestry improvement—giving employment to the unemployed. The U. S. Government is spending the money clearing up forests simply to give work to idle hands. The gasoline tax money is used for the two-fold purpose of giving employment and improving the highways, which is different from the tax money collected for use in operating the ordinary governmental functions of the State.

For the present, persons who are authorized to issue standard forms #44 can get gasoline free in Alabama. Dealers

should know that issuance of these certificates by unauthorized persons might prove costly.

[fol. 127] Should a further study of the question warrant a change in the above, I shall immediately advise you. You may therefore collect the Alabama tax only on that part of gasoline sold in this State where the purchaser is unable to execute the exemption certificate.

Trusting we will some day be able to arrange a system by which no exemptions can be allowed, and thus close up one chance of leakage and unfair competition, I am,

Yours very truly, A. S. Tucker, Chief Clerk Gasolien-Tax Department.

[fol. 128] Copy

EXHIBIT "16"

State of Alabama

The State Tax Commission

Montgomery

(Alabama Great Seal.)

Jan. 24, 1934.

To all licensed dealers:

This is to advise that gasoline sales made to C. W. A. projects may be made less the State tax of 6¢ per gallon, provided the purchaser presents satisfactory evidence that the gasoline is strictly for use in U. S. Governmental work, bought on U. S. Government requisition. Proper certificate must be executed by purchaser for protection of the distributor. This certificate must set out that none of the gasoline thus bought is to be used, or was used, for other than U. S. Governmental activities.

The above ruling is made in the light of additional information received since the first request was made on this department.

First information obtained by this department tended to show that there were two classes of C. W. A. projects—One Federal and the other State or political subdivisions of the State.

Upon a further investigation, it was found that all of the C. W. A. projects are not only financed by the U. S. Government, but are supervised by agents of the U. S. Government. It was also learned that the material is bought on U. S. requisition, and labor as well as material, paid for with checks on the Federal fund, which at no time becomes State monies.

In view of the above, you may claim exemptions on all such sales and these claims will be allowed if proper proof is presented.

You, of course, understand, however, that no exemption can be allowed on sales made to individuals operating cars or trucks on mileage, hour or per diem basis. Also that no exemption can be allowed on sales made by retail dealers from tax paid stock.

Yours very truly, A. B. Tucker, Chief Clerk Gasoline Department.

ABT:W.

[fol. 129] Copy

EXHIBIT "17"

State of Alabama

The State Tax Commission

Montgomery

(Alabama Great Seal.)

Jan. 29, 1934.

Mr. F. L. Tosch, Chief Accountant, The Texas Company, Atlanta, Ga.

DEAR SIR:

Tax Exemptions

Your letter dated Jan. 27th received and carefully noted.

Since writing you on Dec. 27th I have made further investigations and find that practically all of the C. W. A. projects are supervised by Federal agents and that most, if not all the gasoline used is bought with U. S. Funds which, at no time, become State monies.

With this additional information I got out a circular letter ruling that such purchases can be listed as U. S. Sales and sold less the State tax. I am enclosing a copy of this circular.

Of course there are a few workers hired to work on certain construction projects who are furnishing their own truck or auto on a mileage, per diem or load basis. These purchase their own gasoline and oils at a price including the tax.

Now as to the P. W. A. So far no additional information has been received on these projects, but I am of the opinion that the only exemptions that can be allowed in these cases is on the gasoline sold to the officers travelling on U. S. Government expense, who are supplied with identification card No. 45 and exemption certificate No. 44. Gasoline used by municipalities, when bought from local dealers, will bear the tax although it may be used in constructing light plants or municipal buildings with funds loaned by the P. W. A. Advisory Board.

Trusting this clears the matter I am,

Yours very truly, A. B. Tucker, Chief Clerk, Gasoline Tax Department.

T.

[fol. 130] Copy

EXHIBIT "18"

The State of Alabama

The State Tax Commission

Montgomery

(Alabama Great Seal.)

Nov. 15, 1934.

The Texas Company, Atlanta, Ga.

GENTLEMEN:

According to information recently obtained, your bulk plant operators are accepting from Texaco service stations, not operated by The Texas Company, U. S. motor fuel exemption certificates and turning them in as sales to the U. S. Government by The Texas Company.

I will thank you to furnish this office with a statement covering all such transactions and remit the tax of 6¢ a gallon on all claims heretofore made for exemption on this class of sales.

From time to time in the past this department has ruled that sales made by service station operators who purchase gasoline stock "tax paid". In other words we have held that only those sales made by a tax-paying dealer are subject to exemption under the Supreme Court decision in the Pan Handle case, and then only when sales are made to the U. S. Governmental agents for essential governmental functions.

Under date of August 2, 1933, we wrote you as follows, among other things: "Sales made by independent retail dealers or authorized dealers who buy stock "tax paid" can not accept these certificates." When the sale is made to the filling station operator the Alabama tax accrues and subsequent sales are of no concern to the State. Exemptions can be allowed only on those sales made from company-owned gasoline to the Government's agent.

Your usual prompt attention will be appreciated.

Yours very truly, A. B. Tucker, Chief Clerk, Gasoline Tax Department.

[fol. 131] Copy

EXHIBIT "19"

State of Alabama

The State Tax Commission

Montgomery

(Alabama Great Seal.)

January 8, 1935.

Mr. F. L. Tosch, Chief Accountant, The Texas Company, Atlanta, Ga.

DEAR SIR:

Re: United States Motor Fuel Tax Exemption

This will acknowledge receipt of your letter dated January 7 requesting information as to how service station oper-

ators can handle United States tax exemption certificates No. 44 where sales of gasoline are made to Federal employees.

As stated heretofore, service station operators who buy their gasoline, tax paid, cannot handle these certificates. When a Federal employee calls on such a dealer for gasoline and tenders a motor fuel exemption certificate, the service station operator should decline to accept same and in lieu thereof give the Federal Agent a receipt in duplicate to cover the purchase of gasoline, which he should sell at a price including all cost and such profit as he sees fit to charge.

There is no law by which a Federal Agent can force a dealer to sell gasoline less the State tax where such dealer does not pay this tax direct to the State. He can, however, sell this gasoline less the local tax, if provision is made by the local taxing authority for such deduction.

Under the State law, there is no provision for refunds and we can only allow the exemption where the gas is bought from a tax-paying dealer.

Trusting this clears the matter in your mind, I am,

Yours very truly, A. B. Tucker, Chief Clerk, Gasoline Tax Department.

ABT/gc.

[fol. 132] Copy

EXHIBIT "20"

State of Alabama

The State Tax Commission

Montgomery

(Alabama Great Seal.)

Jan. 15, 1935.

Mr. F. L. Tosch, Chief Acct., The Texas Company, Atlanta, Ga.

DEAR SIR:

In further reference to making tax free sales of gasoline to U. S. agents, will say, by way of illustration:

If I operate a service station as the "Tuck Service Station" and make purchases from the Texas Co. with all taxes added to the invoice, I can not sell to the U. S. less the tax, as the privilege for which the tax is charged was exercised by you when you sold me the gasoline and no subsequent sales from that gasoline is taxable because the law specifically provides that the tax can only be collected once.

If I operate a service for you and your truck driver delivers gasoline into my custody for sale to the general public as your gasoline and only have to account to you for sales made from your stock, I can, as your employee, accept the Form 44 exemption certificates for you because the sale was not made until I delivered your gasoline into the fuel tank or other receptacle of the Government's.

In other words when the gasoline passes from you to a customer, the tax accrues, but it does not accrue when the gasoline only passes from one of your storage tanks to another and remains your property.

Trusting this clarifies the matter I am,

Yours very truly, A. B. Tucker, Chief Clerk, Gasoline Tax Department.

T.

[fol. 133] Copy

EXHIBIT "21"

State of Alabama

The State Tax Commission

Montgomery

(Alabama Great Seal.)

11 March, 1935.

Mr. H. L. Sessions, The Texas Company, Mobile, Alabama.

DEAR SIR:

In reply to your letter dated March 6th, will say that gasoline sold from a Company owned or a Company leased station, where the gasoline is the property of the Texas Oil Company, United States Standard Form S-44 can be accepted in lieu of the 6¢ tax.

It is immaterial to the State whether the gasoline is sold on commission or by salaried employees, just so long as the gasoline is the property of the Texas Oil Company when withdrawn from storage and delivered into the motor fuel tank of the car operated by an authorized representative of the United States Government.

If the gasoline delivered into the motor fuel tank of the car operated by a representative of the United States Government is sold from gasoline previously sold to the retail dealer, no exemption is allowable.

Ownership of the filling station has no bearing on the taxibility. The question hinges on the owner of the gas at the time it is withdrawn from the service station for delivery to the motorist.

Trusting this answers your question, I am, with personal good wishes,

Yours very truly, A. B. Tucker, Chief Clerk, Gasoline Tax Department.

ABT/ew.

[fol. 134] Copy

EXHIBIT "22"

State of Alabama

The State Tax Commission

Montgomery

(Alabama Great Seal.)

July 9, 1935.

To all dealers:

GENTLEMEN:

This is to advise that under an opinion issued by the Attorney General under date of July 5, 1935, gasoline sold to the United States Government can not be deducted from the taxable gallons sold or withdrawn from storage in Alabama, but must bear the State tax of 6¢ a gallon.

The Attorney General's opinion in brief says:

"The aggregate tax imposed by the several gasoline excise tax statutes is a privilege tax upon the storage, and consequent withdrawal from storage, of gasoline, which tax accrues upon amount at the time of withdrawal from storage, and it is, the mandatory duty of refiners, storers and distributors to compute and pay the tax as applicable to them on the basis of their withdrawals from storage. In computing and paying the several amounts of tax due by them, distributors, refiners, retail dealers, and storers not entitled to deduct from the basis of computation a number of gallons equal to the number of gallons of gasoline withdrawn from storage by them and sold to the United States Government in Alabama."

The above is for your information and guidance.

After a careful study of the above mentioned opinion, and the fact that the lubricating oil tax law is worded almost exactly like the gasoline tax Acts, it is my personal opinion that the same ruling will apply to both gasoline and lubricating oil sales.

Yours very truly, A. B. Tucker, Chief Clerk, Gasoline Tax Department.

ABT/ew.

[fol. 135] EXHIBIT 3

Standard Form No. 32.
Approved by the President, June 10, 1927.

Contract No. W626 qm—17730

Invitation for Bids No. 626-34-316

Office Identifying No. 9116

Standard Government form of Contract

(Supplies)

Bond $4,190.00—United States Fidelity & Guaranty Company.

Contractor.

New York General Depot,
1st Avenue & 58th Street,
Brooklyn, New York
Department

The Texas Company
Contractor

Contract for Motor Gasoline, Fuel Oil and Kerosene Oil.
Amount, $41,676.68

Place:
Schenectady General Depot, South Schenectady, N. Y.
New York Port of Embarkation, Brooklyn, N. Y.
Picatinny Arsenal, Picatinny, N. J.
Fort McClellan, Ala.
Barksdale Field, La.
Fort Schuyler, N. Y.
Fort Mott, N. J.
Post of San Juan, P. R.
Augusta Arsenal, Augusta, Ga.
New Orleans Q. M. Depot, New Orleans, La.
New York General Depot, Brooklyn, N. Y. (For Forts Wood and Slocum, N. Y.)
Fort Tilden, N. Y.
Cristobal, Canal Zone
Veterans' Adminstration Facility, Lyons, N. J.
Veterans' Adminstration Facility, Northport, L. I., N. Y.
Collector of Customs, N. Y. (For Custom Boats)

Contract for Supplies

This contract, entered into this 21st day of June, 1934 by The United States of America, hereinafter called the Government, represented by the contracting officer executing this contract, and The Texas Company, a corporation organized and existing under the laws of the State of Delaware, 135 East 42nd Street, of the City of New York, in the State of New York, hereinafter called the contractor, witnesseth that the parties hereto do mutually agree as follows:

Article 1. Scope of this contract.—The contractor shall furnish and deliver

[fol. 136] Motor Gasoline, Fuel Oil, Bunker "C" and Kerosene Oil, at the destinations, in quantities, and

for the consideration stated in, and in strict accordance with the specifications, schedules and drawings, all of which are made a part hereof and designated as follows: Schedules of Supplies "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P" and "Q", Specs. VV-G-101 for Motor Gasoline, 2-43D for Fuel Oil, Bunker "C" and VV-K-211 for Kerosene Oil.

Sheets No. 22 to 28, "Instructions to Bidders", and Sheet containing the Federal Tax, the Domestic Products and the NRA Code provisions.

Deliveries shall be made as follows: As called for by the consignees between July 1, 1934 and September 30, 1934.

Prices set forth herein include any Federal Tax heretofore imposed by the Congress which is applicable to the material purchased under this contract. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by the congress after the date set for the opening of the bid upon which this contract is based and made applicable directly upon production, manufacture or sale of the supplies covered by this contract, and are paid by the contractor on the articles or supplies herein contracted for, then the prices named in this contract will be increased or decreased accordingly and any amount due the contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items.

Except as noted below or otherwise indicated herein all unmanufactured articles, materials, or supplies furnished under this contract shall have been mined or produced in the United States and all manufactured articles, materials, or supplies shall have been manufactured in the United States substantially all from articles, materials or supplies mined, produced or manufactured, as the case may be, in the United States.

The contractor agrees that it will comply with each approved Code of Fair Competition to which it is subject and if engaged in any trade or industry for which there is no

approved Code of Fair Competition, then as to such trade or industry, with an agreement with the President under Section 4 (a) of the National Industrial Recovery Act.

The United States shall have the right to cancel this con- [fol. 137] tract for failure to comply with this provision, and make open market purchases or have the work called for by this contract otherwise performed at the expense of the contractor.

The contractor further agrees that where the supplies furnished are not mined, produced or manufactured in the United States the special or general Code of Fair Competition shall apply to that portion of the contract executed in the United States.

The contractor further agrees that it will not accept or purchase for the performance of this contract, or enter into any subcontracts for any articles, materials or supplies in whole, or in part, produced or furnished by any person who shall not have certified that he is complying with and will continue to comply with each Code of Fair Competition which relates to such articles, materials, or supplies or in case there is no approved Code for the whole or any portion thereof then, to that extent, with an agreement with the President under Section 4 (a) of the National Industrial Recovery Act.

Schedule of Supplies "D"

Must be Filled in and Attached to all Quartermaster Corps Contracts for Supplies

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1. Contract number and date: W 626 QM-17730, Dated June 21, 1934.
2. Contracting officer, name: J. D. Goodrich, Major Q. M. C.
   Address: 1st Ave. & 58th St., Brooklyn, N. Y.
3. Contractor, name: The Texas Company,
   Address: 135 East 42nd St., New York, N. Y.
   Factory name and location: Refinery at Mobile, Ala.
4. F. O. B. Delivery and inspection points: Contractor's Refinery.
5. Articles or service: Inspection: At origin as to Quantity and quality.
   Final inspection and acceptance at destination.

Approx. Quantity	Unit	Description and specification	Unit Price	Est. Total
36950	Gals	Gasoline, Motor U. S. Govt. Spec. VV-G-101. Delivery to be made in Government or Commercial Tank cars	.07718	$2851.80

The price indicated on this schedule is the top price to be paid for gasoline during the duration of the contract. However, the gasoline will be billed by the contractor at the price in effect on the date of delivery or shipment, but in no event will exceed the price stated in this schedule.

Price to be paid for gasoline does not include State tax. Deliveries not meeting specifications will be returned to the contractor at his expense and contractor will be required to replace the quantities rejected with like quantities of specification quality, without cost to the U. S. Government.

[fol. 138] 6. Variations: Quantities listed hereon are subject to increase (or decrease of not to exceed —%.

7. Schedule of deliveries: Between July 1 and Sept. 30, 1934, as called for on delivery orders issued by the consignee.

7A. This contract is for general utilization at the station named herein: All calls on contractor or orders for delivery of supplies hereunder, issued by the consignee will contain the certificate as to availability of funds quoting the procurement authority number to be used in making payments.

8. Shipping directions—including packing and marking:

Quartermaster
Fort McClellan, Alabama,

Ship on Government bill of lading. When ready for shipment advise consignee and government bill of lading will be furnished.

Freight Rate $.01257762 per gallon.

9. Payment of bills: Render invoices in triplicate, quoting this contract number, to the Finance Officer Ft. McClellan, Ala., and who should furnish this office a copy of each voucher paid hereunder.

To insure prompt payment the original copy of the invoice should be certified as follows:

"Certified correct, payment not received.
—— —— (Name of Contractor)
By —— —— (Signer's name and title)."

10. Terms of Payment; Discount will be allowed for prompt payment as follows:
From and including date of delivery of supplies at destination 10 calendar days 1%; 20 calendar days — %; 30 calendar days — %.
11. Bond: Required. Name and address of guarantor(s) United States Fidelity and Guaranty Company, 75 William St., New York, N. Y. Amount, $285.00. Annual Bond No. —.
12. The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to procurement authority. See Par. 7A above. The available balance of which is sufficient to cover cost of same.
13. Serial number of Invitation for Bids RM 626-34-316 (Bid #17) opened 6/6/34.
14. Serial number of Requisition QM 533-237-34.

(The contract also contains provisions for the sale and delivery by the Texas Company to the United States of gasoline and other petroleum products in states other than Alabama, which provisions are, by agreement of the parties, eliminated from the record.)

[fol. 139] Standard Form No. 36

Standard Government Form of Continuation Schedule for Standard Form 31 or 33

(Supplies)

Instructions to Bidders on Motor Gasoline, Fuel Oil and Kerosene

The quantities specified in schedules are the estimated quantities for the three (3) months period from July 1st, 1934, to September 30, 1934, and quotations on this basis are requested:

General Conditions

Bids are invited for furnishing products of the grades specified at the places designated, during the period indicated above, to meet the needs of the various Governmental activities, in the form or forms of delivery stated in the schedule.

For deliveries to Government activities other than the Quartermaster Corps, U. S. Army, orders will be placed and inspection and payment will be made by the representative of the Government activity concerned.

For Quartermaster Corps activities delivery orders will be placed by The Quartermaster of the Port or Station where delivery is to be made, and the Finance Officer indicated on Schedule of Supplies or Purchase Order, together with Procurement Authority will be designated on the delivery order and bills will be required to be rendered, to Finance Officer designated for each shipment.

As it is impossible to determine the quantities of products of the kind or kinds, at the places and in the forms of delivery specified in this schedule, that will be required during the contract term, each bidder whose bid is accepted will be required to deliver such quantities under the item or items for which contract is awarded, that may be ordered during the contract term, except as otherwise indicated in bid. Supplies will be ordered from time to time in such quantities as may be needed. The estimates as to quantities listed in the schedule are given for information only, and will not relieve the Government of its obligation to order from contractors all of the products of the kinds and in the forms of delivery contracted for, that may, in the judgment of the ordering officers, be needed; and shall not in any case relieve the contractor of his obligation to fill all orders under any contract awarded him. Bids will be considered if made with a proviso that the total deliveries will not exceed a certain specified quantity, but no bid will be considered which provides that the Government shall guarantee to take any definite quantity.

The products mentioned below shall be furnished in strict accordance with their respective specifications, viz:

Gasoline, U. S. Motor—Federal Specification VV-G-101
Motor Fuel V—Federal Specification VV-M-571

Oil, Fuel—Bunker A, B and C,—U. S. Army Specification 2-43D and Diesel Engine (Navy Standard)
Oil, Fuel, Distillates—U. S. Army Specification 2-74
Oil, Kerosene—Federal Specification VV-K-211

Inspection

All Gasoline, Fuel Oil and Oil, Keresone, etc., delivered in tank cars shall be tested for quality by the contractor prior to loading and contractor shall immediately forward to consignee duplicate copies of test report showing that the product conforms to the specifications, and all such shipments will be sampled upon arrival at destination and [fol. 140] sample forwarded to Government agency designated to make test, or at the discretion of the receiving activity. Arrangments may be made to have a Government inspector make inspection at point of origin before shipment.

Deliveries other than in tank cars will be samples and inspected only when, in the opinion of the receiving officer, products meeting the specifications are not being delivered.

Determination of Quantity

The unit of quantity will be the gallon of 231 cubic inches.

Deliveries will be corrected to quantity at 60 degrees Fahrenheit in accordance with Bureau of Standards Supplement to Circular No. 154, "Abridged Volume Correction Table for Petroleum Oils."

Contractor will be required to furnish with each tank car, delivery ticket showing number of gallons, temperature of product and outage (in dome or shell as the case may be) when loaded and measured.

Containers

When delivery in drums or steel barrels is specified, it is intended that contractor's drums or barrels will usually be supplied. The contents of contractor's drums or barrells upon delivery will be immediately transferred to Government owned containers and the contractor's drums or barrels returned immediately to the contractor's agent or to the contractor by and at the expense of the Government.

If drums or barrels are not returned to the contractor

or to a common carrier for shipment to the contractor within — days after receipt by the consignee, they will be invoiced to and paid for by the Government at $— per drum or barrel. If, however, such steel drums or barrels in good condition are, after having been paid for, returned by the Government at the expense of the Government, within 12 months after date of delivery of the gasoline, etc., the contractor will allow $— for each drum or barrel returned.

If at any station it is desired to have gasoline, etc., delivered in Government owned drums or barrels, it will be so stated in the schedule and when orders are placed for this form of delivery, Government owned drums or barrels will be delivered by and at the expense of the Government to the contractor's plant or station, the subsequent delivery of the filled drums or barrels from the contractor's plant to the Government activity to be by and at the expense of the contractor.

Where delivery in tank cars is specified, it is intended that Government owned tank cars will be used. If at any time Government tank cars are not available, the contractor will be required to furnish tank cars at no additional cost, and will be required to state on delivery ticket the capacity of the car, when shell is full the number of gallons per inch in dome and the number of gallons for each of the first four inches out of shell. This information must be furnished with each shipment in other than Government-owned tank cars, so that the receiving officer may be in a position to determine the quantity of gasoline, etc., in cars upon arrival. If a contractor's tank car is received more than four inches out of shell, the receiving officer will guage the car and determine the number of gallons by correspondence with contractor.

Bidder must insert in the above blank spaces the price per steel drum or barrel to be charged for all such drums or barrels not returned during the period mentioned, and the price allowed to the Government when drums or barrels are returned.

Any drums or barrels furnished by the contractor must be in accordance with Interstate Commerce Commission Specifications No. 5.

Deliveries

To be delivered as herein required, at the points named, [fol. 141] in the manner specified, and free of all delivery expenses.

Each delivery must be accompanied by delivery tickets.

Orders will provide for delivery within a specified number of days after date of order. The time necessary for order to reach contractor will be taken into consideration, and as much time as possible will be allowed the contractor for making delivery. It is to be understood, unless otherwise stated in bid, that contractors shall be in a position to make tank wagon deliveries within 48 hours after receipt of order, and in the case of shipments to deliver to carrier within 48 hours after receipt of order or the spotting of tank cars at the contractor's plant.

All bids will be considered as f. o. b. points indicated in the schedule, unless stated otherwise by the bidder. If point of delivery stipulated by bidder is different from the point of delivery indicated in the Schedule, the cost of transportation and handling to the point of delivery stipulated in the schedule will be considered in making awards.

The Government reserves the right to accept or reject any or all bids.

Bidding

Quotations may be submitted on any or all items as bidder may elect.

Bids must be submitted at definite prices per gallon, and shall be exclusive of state or municipal taxes. (See Decision of the Supreme Court in the case of the Panhandle Oil Company v. Mississippi, May 14, 1928.)

Bids quoting differentials only, based on market prices, will not be considered. No sum in excess of the bid price will be paid by the United States.

Any person (as such term is defined in the Code of Fair Competition for the Petroleum Industry) selling petroleum or the products thereof to the United States, or any agency therof, or to any state or territory or political subdivision or agency thereof, or to the District of Columbia, or to any municipality, must comply with the provisions of Rule 3 of Article V of the Code of Fair Competition for the Petroleum Industry except that a top price may be bid. In no event shall the top price [redacted] lower than 25% more than the

posted price on the date the bid is made, less discounts authorized under Rule 3 of Article V. No contract containing a top price provision shall be made for a period exceeding three months. Nothing herein contained shall be construed to allow discounts from the posted price at filling stations.

Bids must be executed in triplicate.

Alternate bids will not be accepted unless asked for.

There is no objection to bidders removing sheets of this schedule which contain items in which they are not interested, but must indicate on Standard Form No. 31, pertaining to this bid, the sheet numbers that have been removed. No sheets containing instructions or conditions will be removed.

Should supplies or materials be offered by a bidder by sample, brand name, catalog reference or model number, when in this invitation for bids, a U. S. Army, Federal or tentative specification is given for the supplies or material required, the sample so offered, or the brand name, catalog reference or model number specified by the bidder will be disregarded, and he will be held to have bid upon supplies conforming with the specifications given in the invitation for bids.

When an item of supplies or materials is followed by a designated U. S. Army, Federal or tentative specification and a bid sample is elsewhere required in this invitation [fol. 142] for bids to be furnished by the bidder, the award will be made upon the basis of the specification given and not upon the bid sample furnished by the bidder.

Failure to Perform

If the contractor fails to complete deliveries under calls within the time agreed upon, the Government reserves the right to purchase the delinquent portion in the open market, charging the increased cost, if any, to the contractor.

Bid Guaranty

When totaling $1,000.00 or more, bids must be accompanied by security in the amount of 10% of the aggregate price, in the form of: (a) a certified check payable to the Contracting Officer shown on Invitation for Bids, attached or (b) United States bonds; or (c) a bid bond executed by approved sureties on Standard Form 24, unless annual bid bond of sufficient unobligated amount has been fur-

nished, reference to same should be made here, showing No. — Amount —, Expiration date —— —, ——.

Sealed bids in triplicate will be received in this office until the date and hour named in the accompanying schedules and then publicly opened for furnishing the materials and supplies called for therein.

Envelopes containing bids must be sealed and marked in the upper left-hand corner with the name and address of the bidder and in the lower left hand corner the number of the Invitation to Bid and date and hour of opening and addressed to the purchasing agency named below, affixing sufficient postage.

Quartermaster Supply Officer
New York General Depot
1st Avenue & 58th Street
Brooklyn, New York.

Whenever the conditions relating to discounts that may be offered by signers of an approved code of fair competition under the National Industrial Recovery Act or an approved marketing agreement under the Agricultural Adjustment Act are in conflict with the conditions started in Standard Form No. 31 hereof, relating to discounts, the conditions appearing in codes of fair competition and marketing agreements will be accepted in lieu of those specified on Sheet 1 of this form.

Prices bid herein include any Federal Tax heretofore imposed by the Congress which is applicable to the Material on this bid. If any sales tax, processing tax, adjustment charge, or other taxes are imposed or changed by Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture or sales of the supplies covered by this bid, and are paid by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly, and any amount due the contractor as a result of such change will be charged to the Government and entered on voucher (or invoice) as separate items.

"It is hereby certified that in the event award is made to the undersigned, the unmanufactured articles, materials, or supplies furnished the United States will have been mined or produced in the United States, and the manufactured articles, materials, and supplies will have been manu-

factured in the United States all from articles, materials, or supplies mined, produced or manufactured as the case may be, in the United States, except as noted below or otherwise indicated in this bid."

_____

By_____

Bidder must sign this certificate.

[fol. 143] No bid (or quotation) will be considered or accepted unless it includes or is accompanied by the following certificate duly executed by the bidder:

"It is hereby certified that the undersigned is complying with, and will continue to comply with, each approved code of fair competition to which it is subject, and if engaged in any trade or industry for which there is no approved code of fair competition, then, as to such trade or industry it has become a party to and is complying with, and will continue to comply with, an agreement with the President under Section 4(a) of the National Industrial Recovery Act."

_____

_____

(Bidder must sign this certificate)

"Any person falsely certifying as to compliance as aforesaid who submits any such proposal, bid, contract, or sub-contract, or who accepts any purchase order, may be punished as provided in Section 10(a) of the National Industrial Recovery Act by a fine of not to exceed five hundred dollars ($500.00) or imprisonment not to exceed six (6) months, or both, and in event of any such false certification by any such person, any contract, sub-contract, or purchase order to which he is party secured by or in furtherance of any such proposal or bid may be cancelled by the other party thereto, and the unfinished portion thereof completed at the expense of the person guilty of such false certification and his sureties, if any.

"The contractor (vendor) agrees that it will comply with each approved Code of Fair Competition to which it is subject and if engaged in any trade or industry for which there is no approved Code of Fair Competition, then as to such trade or industry, with an agreement with the

President under Section 4(a) of the National Industrial Recovery Act.

"The United States shall have the right to cancel this contract for failure to comply with this provision, and make open market purchases or have the work called for by this contract otherwise performed at the expense of the contractor.

"The contractor further agrees that where the supplies furnished are not mined, produced or manufactured in the United States the special or general Code of Fair Competition shall apply to that portion of the contract executed in the United States.

"The contractor further agrees that it will not accept or purchase for the performance of this contract or purchase order, or enter into any sub-contracts for any articles, materials or supplies in whole, or in part, produced or furnished by any person who shall not have certified that he is complying with and will continue to comply with each Code of Fair Competition which relates to such articles materials, or supplies, or in case there is no approved Code for the while or any portion thereof then, to that extent, with an agreement with the President under Section 4(a) of the National Industrial Recovery Act."

Exemption under NRA and PRA:

The following is quoted from Executive Order No. 6354 dated October 23, 1933.

"The provisions of the President's Reemployment Agreement, issued July 27, 1933, shall not be held to apply to employers engaged only locally in retail trade or in local service industries (and not in a business in or affecting interstate commerce) who do not employ more than five persons and who are located in towns of less than 2,500 population (according to the 1930 Federal Census) which are not in the immediate trade area of a city of larger population, except so far as such employers who have signed the President's Reemployment Agreement desire to continue to comply with the terms of said agreement after the date of this order; and this release of such employers who have heretofore signed the President's Re- [fol. 144] employment Agreement shall be further extended so as to release to the same extent all such employers of obligations not voluntarily assumed under the

provisions of a code of fair competition approved by the President. This exemption is intended to relieve small business enterprises in small towns from fixed obligations which might impose exceptional hardships; but it is expected that all such enterprises will conform to the fullest extent possible with the requirements which would be otherwise obligatory upon them."

Bidders are informed that when exemption is claimed under the above quoted provisions of the Executive Order of October 23, 1933, they will submit with their bid a certificate containing the following:

I (we) am (are) engaged only locally in retail trade (or in local service industries) and not in a business in or affecting interstate commerce. I (we) do not employ more than five persons and am (are) located in a town of less than 2,500 population (according to 1930 Federal Census.) to wit:

_____

(Name of town or village and State)

which is not in the immediate trade area of a city of larger population.

_____

(Full name of bidder)

_____

(Official capacity)

By _____

(Sign in ink)

[fol. 145] Standard Form No. 32

Sheet 2

(Supply Contract)

Article 2. Changes.—Where the supplies to be furnished are to be specially manufactured in accordance with Government drawings and specifications, the contracting officer may at any time, by a written order, and without notice to the sureties, make changes in the drawings or specifications, except Government Master Specifications. Changes as to shipment and packing of all supplies may also be made as above provided. If such changes cause an in-

crease or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. No change involving an estimated increase or decrease of more than Five Hundred Dollars shall be ordered unless approved in writing by the head of the department or chief of bureau. Any claim for adjustment under this article must be asserted within ten days from the date the change is ordered unless the contracting officer shall for proper cause extend such time, and if the parties cannot agree upon the adjustment the dispute shall be determined as provided in Article 12 hereof. But nothing provided in this article shall excuse the contractor from proceeding with the contract as changed.

Article 3. Extras.—Except as otherwise herein provided, no charge for extras will be allowed unless the same have been ordered in writing by the contracting officer and the price stated in such order.

Article 4. Inspection.—(a) All material and workmanship shall be subject to inspection and test at all times and places and, when practicable, during manufacture. The Government shall have the right to reject articles which contain defective material or workmanship. Rejected articles shall be removed by and at the expense of the contractor promptly after notification of rejection.

(b) If inspection and test, whether preliminary or final, is made on the premises of the contractor or subcontractor, the contractor shall furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient inspections and tests required by the inspectors in the performance of their duty. All inspection and tests by the Government shall be performed in such a manner as not to unduly delay the work. Special and performance tests shall be as described in the specifications. The Government reserves the right to charge to the contractor any additional cost of inspection and test when articles are not ready at the time inspection is requested by the contractor.

(c) Final inspection and acceptance of materials and finished articles will be made after delivery, unless otherwise stated. If final inspection is made at a point other

than the premises of the contractor or a subcontractor, it shall be at the expense of the Government except for the value of samples used in case of rejection. Final inspection shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the Government for such materials or supplies as are not in accordance with the specifications. In the event public necessity requires the use of materials or supplies not conforming to the specifications, payment therefor shall be made at a proper reduction in price.

Article 5. Delays—Damages.—If the contractor refuses or fails to make deliveries of the materials or supplies within the time specified in Article 1, or any extension thereof, the Government may terminate the right of the contractor to proceed with deliveries or such part or parts thereof as to which there has been delay. In such event, the Government may purchase similar materials or supplies in the open market or secure the manufacture and delivery of the materials and supplies by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby: Provided, That the contractor shall not be charged with any excess cost occasioned the Government by the purchase of materials or supplies in the open market or under other contracts when the delay of the contractor [fol. 146] in making deliveries is due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather but not including delays caused by subcontractors: Provided further, That the contractor shall within ten days from the beginning of any such delay notify the contracting officer in writing of the causes of delay, who shall ascertain the facts and extent of delay, and his findings of facts thereon shall be final and conclusive on the parties hereto, subject only to appeal within thirty days by the contractor to the head of the department concerned, whose decision on

such appeal as to the facts of delay shall be final and conclusive on the parties hereto.

Article 6. Responsibility for supplies tendered.—The contractor shall be responsible for the articles or materials covered by this contract until they are delivered at the designated point, but the contractor shall bear all risk on rejected articles or materials after notice of rejection. Where final inspection is at point of origin but delivery by contractor is at some other point, the contractor's responsibility shall continue until delivery is accomplished.

Article 7. Increase or decrease.—Unless otherwise specified, any variation in the quantities herein called for, not exceeding 10 per cent. will be accepted as a compliance with the contract, when caused by conditions of loading, shipping, packing or allowances in manufacturing processes, and payments shall be adjusted accordingly.

Article 8. Payments.—The contractor shall be paid, upon the submission of properly certified invoices or vouchers, the prices stipulated herein for articles delivered and accepted or services rendered, less deductions, if any, as herein provided. Unless otherwise specified, payments will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the contractor, payments for accepted partial deliveries shall be made whenever such payments would equal or exceed either $1,000 or 50 per cent. of the total amount of the contract.

Article 9. Additional security.—Should the surety upon any bond that is furnished for the performance of this contract become unacceptable to the Government, the contractor must promptly furnish such additional security as may be required from time to time to protect the interests of the Government.

Article 10. Officials not to benefit.—No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Article 11. Covenant against contingent fees.—The contractor warrants that he has not employed any person to

solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract, or, in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage, or contingent fees. This warranty shall not apply to commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

Article 12. Disputes.—Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the contracting officer or his duly authorized representative, subject to written appeal by the contractor within thirty days to the head of the department concerned, whose decision shall be final and conclusive upon the parties hereto as to such questions of fact. In the meantime, the contractor shall diligently proceed with performance.

[fol. 147] Article 13. Definitions.—(a) The term "head of department" as used herein shall mean the head of the executive department or independent establishment involved or his assistant.

(b) The term "contracting officer" as used herein shall include his duly appointed successor or his duly authorized representative.

Article 14. Alterations.—The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

The United States of America, by (Signed) J. D. Goodrich (Official title:) Major, Q. M. Corps. The Texas Company, Contractor, by (Signed) R. L. Saunders, 135 East 42nd Street, New York, N. Y.

Two witnesses: R. H. Stoyle. Frank J. Shipman.

I, W. G. Elicker, certify that I am the Assistant Secretary of the corporation named as contractor herein; that R. L. Saunders, who signed this contract on behalf of the

contractor, was then Manager of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Signed) W. G. Elicker, Asst. Secretary. (Corporate Seal.)

[fol. 148] Directions for Preparation of Contract

1. This form or Standard Form No. 33 shall be used whenever a formal contract is entered into for the procurement of supplies and manufactured articles, whether stock or special, except coal, but their use will not be required in foreign countries.

2. There shall be no deviation from this Standard Contract Form, except as provided for in these instructions, without prior approval of the Director of the Bureau of the Budget obtained through the Interdepartmental Board of Contracts and Adjustments. Where interlineations, deletions, additions, or other alterations are permitted, specific notations of the same shall be entered in the blank space following the article entitled "Alterations" before signing. This article is not to be construed as general authority to deviate from the standard form. Deletion of the descriptive matter not applicable in the preamble need not be noted in the article entitled "Alterations."

3. The blank space of Article 1 is intended for the insertion of a statement of supplies to be furnished or work done, together with time and place of performance and price, or for the enumeration of papers which contain the necessary data.

4. If it is deemed necessary to include an article on patents, the Invitation to Bidders shall so state and the following article be used:

Article.—Patents.—The contractor shall hold and save the Government, its officers, agents, servants, and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in the performance of this contract, excepting patented articles required by the Government in its specifications, the use of which the contractor does not control.

5. If it is deemed necessary to provide for liquidated damages for delay, the following article shall be substituted for Article 5 and prospective bidders so advised:

Article.—Delays—Liquidated damages.—If the contractor refuses or fails to make delivery of the materials or supplies within the time specified in Article 1, or any extension thereof, the actual damage to the Government for the delay will be impossible to determine, and in lieu thereof the contractor shall pay to the Government, as fixed, agreed, and liquidated damages for each calendar day of delay in making delivery, the amount as set forth in the specifications or accompanying papers, and the contractor and his sureties shall be liable for the amount thereof: Provided, however, That the Government reserves the right to terminate the right of the contractor to proceed and to purchase similar material or supplies in the open market or secure the manufacture and delivery thereof by contract or otherwise, charging against the contractor and his sureties any excess cost occasioned the Government thereby, together with liquidated damages accruing until such time as the Government may reasonably procure similar material or supplies elsewhere: Provided further, That the contractor shall not be charged with liquidated damages or any excess cost when the delay in delivery is due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God or the public enemy, acts of the Government, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, and unusually severe weather but not including delays caused by subcontractors: Provided further, That the contractor shall, within ten days from the beginning of any such delay, notify the contracting officer in writing of the causes of the delay, who shall ascertain the facts and extent of the delay and his findings of facts thereon shall be final and conclusive on the parties hereto, subject only to appeal, within thirty days, by the contractor to the head of the department concerned, whose decision on such appeal as to the facts of delay shall be final and conclusive on the parties hereto.

6. If approval of the contract is required before it shall become binding, the following article must be added:

Article—Approval.—This contract shall be subject to the [fol. 149] written approval of —— —— and shall not be binding until so approved.

(Contracts subject to approval are not valid until approved by the authority designated to approve them, and the contractor's copy will not be delivered, nor any distribution made, until such approval. All changes and deletions must have been made before the contract is forwarded for approval.)

7. The number of executed copies and of certified copies, designation of disbursing officer, statement of appropriations, amount of bond, designation of place of inspection, as well as other administrative details, shall be as directed by the department to which the contract pertains.

8. All blank spaces must be filled in or ruled out. The contract must be dated, and the bond must bear the same or subsequent date.

9. An officer of a corporation, a member of a partnership, or an agent signing for the principal, shall place his signature and title after the word "By" under the name of the principal. A contract executed by an attorney or agent on behalf of the contractor shall be accompanied by two authenticated copies of his power of attorney or other evidence of his authority to act on behalf of the contractor.

10. If the contractor is a corporation, one of the certificates following the signatures of the parties must be executed. If the contract is signed by the secretary of the corporation, then the first certificate must be executed by some other officer of the corporation under the corporate seal, or the second certificate executed by the contracting officer. In lieu of either of the foregoing certificates there may be attached to the contract copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

11. The full name and business address of the contractor must be inserted, and the contract signed with his usual signature. Typewrite or print name under all signatures to contract and bond.

Exhibit No. 4

Standard Form No. 32
Approved by the President
June 10, 1927

E.C.F. Contract No. W626E.C.F.-379

Invitation for Bids no. 626-35-72. Office Identifying No. 2437.

STANDARD GOVERNMENT FORM OF CONTRACT

(SUPPLIES)

Bond waived.

NEW YORK GENERAL DEPOT,
1ST AVENUE & 58TH STREET,
BROOKLYN, NEW YORK.
(Department)

Filed Oct. 24-1935
O. D. Street, Jr.
Clerk

The Texas Company
(Contractor)

Contract for Motor Gasoline and Kerosene Oil. Amount, $ 18,996.12

Place Various Reforestation Camps throughout States in the Fourth Corps Area.

APPROVED: By Director, Emergency Conservation Work, July 24, 1934.

CONTRACT FOR SUPPLIES

THIS CONTRACT, entered into this 1st day of October, 1934, by the United States of America, hereinafter called the Government, represented by the Contracting officer executing this contract, and The Texas Company, a corporation organized and existing under the laws of the State of Delaware, 135 East 42nd Street, of the city of New York, in the State of New York, hereinafter called the contractor, witnesseth that the parties hereto do mutually agree as follows:

Article 1. Scope of this contract.--The contractor shall furnish and deliver Motor Gasoline and Kerosene Oil, in the quantities, at the various Reforestation Camps throught the States of Alabama, Florida, Georgia, Mississippi, North Carolina and South Carolina, for the Civilian Conservation Corps, and for the consideration stated in and in strict accordance with the specifications, Shedules and drawings, all of which are made a part hereof and designated as follows:
Schedules of Supplies "A", "B", "C", "D", "E", and "F",
Specs. VV-G-101 for Motor Gasoline and VV-K-211 for Kerosene Oil,
Sheets No. 17 to 22, "Instructions to Bidders", and
Sheet containing the Federal Tax, the Domestic Products and the NRA Code provisions.

Deliveries shall be made as follows: As called for by the Camp Commanders, between October 1, 1934 and December 31, 1934.

Page 3 of this contract is identical with page 3 of the contract attached

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as Exhibit 3 and is eliminated from the record by agreement of the parties.

War Department
Q. M. C. Form 309 OFFICE IDENTY. 2437.
Authorized Nov. 16, 1927

SCHEDULE OF SUPPLIES "A"

Must be filled in and attached to all Quartermaster Corps contracts for supplies.

1. Contract number and date W 626 ECF - 379, DATED OCT. 1, 1934.
2. Contracting officer, name J. D. GOODRICH, MAJOR Q.M.C.
   Address 1ST AVE & 58TH ST., BROOKLYN, N.Y.
3. Contractor, name THE TEXAS COMPANY
   Address 135 EAST 42ND STREET, NEW YORK, NEW YORK.
   Factory name and location
4. F. O. B. delivery and inspection points DESTINATION
5. Articles or services: INSPECTION: TO BE HANDLED BY CONSIGNEE.

APPROX. Quantity	Unit	Description and Specification	Unit Price	EST. Total
2500	GALS.	GASOLINE, MOTOR, U.S. GOVT. SPEC. VV-G-101. DELIVERY TO BE MADE IN TANK WAGONS DIRECT TO CAMP. (FIRE CHIEF)	.1783	$445.75

NO DELIVERIES OF LESS THAN 50 GALLONS SHALL BE MADE.
PRICE TO BE PAID FOR GASOLINE DOES NOT INCLUDE STATE TAX.
TANK WAGON DELIVER: CONTRACTOR'S POSTED TANK WAGON PRICE AT TIME OF DELIVERY SUBJECT TO DISCOUNTS BELOW, WITH MAXIMUM PRICES AS SHOWN IN THIS SCHEDULE.

DISCOUNTS:

DELIVERIES:	"FIRE CHIEF" ABOVE 60 OCTANE
FROM 3,000 GALS. TO 10,000 GALS. PER MONTH	.01
OVER 10,000 GALS. PER MONTH	.02

NO DISCOUNT MAY BE PAID OR ALLOWED AT TIME OF DELIVERY BUT SAME SHALL BE DUE AND PAYABLE WITHIN 25 DAYS FROM THE END OF THE MONTH IN WHICH DELIVERIES ARE MADE.
THE TERM "MONTH" AS USED IN THIS CONTRACT FOR THE PURPOSE OF DISCOUNTS MEANS A CALENDAR MONTH. DISCOUNTS FOR DELIVERIES DURING FRACTIONAL PARTS OF CALENDAR MONTHS AT THE COMMENCEMENT AND ENDING OF THE CONTRACT PERIOD SHALL BE COMPUTED PROPORTIONATELY.
THE PRICE INDICATED ON THIS SCHEDULE IS THE TOP PRICE TO BE PAID DURING THE DURATION OF THE CONTRACT, HOWEVER, THE COMMODITY CONTRACTED FOR WILL BE BILLED BY THE CONTRACTOR AT THE PRICE IN EFFECT ON THE DATE OF DELIVERY OR SHIPMENT, BUT IN NO EVENT WILL THE BILLING PRICE EXCEED THE PRICE STATED IN THIS SCHEDULE.

SRB:AR

SCHEDULE "A" OFFICE IDENTY. NO. 2437

6. Variations: Quantities listed hereon are subject to increase (or decrease) of not to exceed --------%.

7. Schedule of deliveries: DELIVER AT THE RATE OF APPROXIMATELY 1000GALS. PER MONTH, 500 GALS. EVERY 15 DAYS BETWEEN OCT. 16AND DEC. 31, 1934, AS CALLED FOR ON DELIVERY ORDERS ISSUED BY THE CAMP COMMANDER.

ANY QUANTITY NOT CALLED FOR IS AUTOMATICALLY CANCELLED.

8. Shipping directions--including packing and marking:

COMMANDING OFFICER,
CCC CO. #1432
LOCATION: NEAR CLAYTON, ALA.

ACCOUNTABLE OFFICE: Q.M., DISTRICT H. CCC., FT. BENNING, GA.

DELIVERIES NOT MEETING SPECIFICATIONS WILL BE RETURNED TO THE CONTRACTOR AT HIS EXPENSE AD CONTRACTOR WILL BE REQUIRED TO REPLACE THE QUANTITIES REJECTED WITH LIKE QUANTITIES OF SPECIFICATION QUALITY, WITHOUT COST TO THE US. GOVT.

9. Payment of bills: Render invoices in triplicate, quoting this contract number to the FINANCE OFFICER FT. MCPHERSON, GA. AND WHO SHOULD FURNISH THIS OFFICE A COPY OF EACH VOUCHER PAID HEREUNDER.

To insure prompt payment the original copy of the invoice should be certified as follows: "Certified correct, payment not received.

_____(Name of contractor)

By _____(Signer's name and title)"

10. Terms of payment: Discount will be allowed for prompt payment as follows: SEE 1ST SHEET

10 calendar days NET %; 20 calendar days NET %; 30 calendar days NET %.

11. Bond: WAIVED. name and address of guarantor(s) _____ amount, $ _____. annual Bond No. _____

12. The supplies and services to be obtained by this instrument are authorizedby, are for the purpose set forth in, and are chargeable to procurement authority FD 804 P1-0236 A8815-45, the available balance of which is sufficient to cover cost of same.

13. Serial number of Invitation For Bids RM 626-35-72 (BID #8) OPENED 9/26/34

14. Serial number of Requisition CCC 5403-119-5

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SCHEDULE OF SUPPLIES OFFICE IDENTY. NO. 2437

"B"

Must be filled in and attached to all Quartermaster Corps contracts for supplies

1. Contract number and date W 626 ECF-379, DATED OCT. 1, 1934.

2. Contracting officer, name J. D. GOODRICH, MAJOR Q.M.C.
Address 1ST AVE & 58TH ST., BROOKLYN, N.Y.

3. Contractor, name THE TEXAS COMPANY
Address 135 EAST 42ND STREET, NEW YORK, NEW YORK
Factory Name and location ____

4. F. O. B. delivery and inspection points DESTINATIONS

5. Articles or services: INSPECTION: TO BE HANDLED BY CONSIGNEES.

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APPROX. QUANTITY	UNIT	DESCRIPTION AND SPECIFICATION	UNIT PRICE	EST. TOTAL.
		THE PRICE INDICATED ON THIS SCHEDULE IS THE TOP PRICE TO BE PAID DURING THE DURATION OF THE CONTRACT, HOWEVER, THE COMMODITY CONTRACTED FOR WILL BE BILLED BY THE CONTRACTOR AT THE PRICE IN EFFECT ON THE DATE OF DELIVERY OR SHIPMENT, BUT IN NO EVENT WILL THE BILLING PRICE EXCEED THE PRICE STATED IN THIS SCHEDULE.		
		GASOLINE, MOTOR, U.S. GOVT., SPEC. VV-G 101, DELIVERY TO BE MADE IN TANK WAGONS DIRECT TO CAMP. TO BE FURNISHED TO VARIOUS REFORESTATION CAMPS. THROUGHOUT THE STATES OF MISS. AND ALA. AS SHOWN BELOW: (FOR CIVILIAN CONSERVATION CORPS)		
2100	GALS	SHIP TO: C.O., CCC CO. #481, CAMP S-57, OXFORD, MISS. (INDIAN)	.11	$231.00
2100	GALS	SHIP TO: C.O., CCC CO. # 487. CAMP S-62, BESSEMER, ALA.(FIRE CHIEF)..	.1346	282.66
2100	GALS	SHIP TO: C.O., CCC CO. #2424. CAMP P-58, HOLLY SPRINGS, MISS.(INDIAN).	.1412	296.52
		TANK WAGON DELIVERY: CONTRACTOR'S POSTED TANK WAGON PRICE AT TIME OF DELIVERY SUBJECT TO DISCOUNTS BELOW, WITH MAXIMUM PRICES AS SHOWN IN THIS SCHEDULE.		
		DISCOUNTS:	FIRE CHIEF ABOVE 60 OCTANE	INDIAN BELOW 60 OCT
		DELIVERIES: FROM 3,000 to 10,000 GALS. PER MONTH	.01	.005
		OVER 10,000 GALS PER MONTH	.02	.01
		NO DISCOUNT MAY BE PAID OR ALLOWED AT TIME OF DELIVERY BUT SAME SHALL BE DUE AND PAYABLE WITHIN 25 DAYS FROM THE END OF THE MONTH IN WHICH DELIVERIES ARE MADE.		
		THE TERM "MONTH" AS USED IN THIS CONTRACT FOR THE PURPOSE OF DISCOUNTS MEANS A CALENDAR MONTH. DISCOUNTS FOR DELIVERIES DURING FRACTIONAL PARTS OF CALENDAR MONTHS AT THE COMMENCEMENT AND ENDING OF THE CONTRACT PERIOD SHALL BE COMPUTED PROPORTIONATELY.		
		NO DELIVERIES OF LESS THAN 50 GALLONS SHALL BE MADE.		
		PRICE TO BE PAID FOR GASOLINE DOES NOT INCLUDE STATE TAX.		
		DELIVERY OF GASOLINE, AT THE RATE OF 350 GALLONS EVERY 15 DAYS. BETWEEN OCT. 1 AND DEC. 31, 1934, AS CALLED FOR ON DELIVERY ORDERS ISSUED BY THE CAMP COMMANDER.		
		IN COMPUTING DELIVERIES TO DETERMINE TANK WAGON QUANTITY DISCOUNT EARNED, DELIVERIES OF FIRE CHIEF AND INDIAN GASOLINE ARE TO BE ADDED SEPARATELY, EACH AS IF NO DELIVERY OF THE OTHER PRODUCT HAD BEEN MADE.		
		OIL, KEROSENE, SPEC. VV-K-211, DELIVERY TO BE MADE DIRECT TO CAMP IN 5 GAL. CANS TO BE FURNISHED TO VARIOUS REFORESTATION CAMPS THROUGHOUT THE STATES OF ALABAMA, GEORGIA AND MISSISSIPPI, FOR CIVILIAN CONSERVATION CORPS IN QUANTITY AND PRICE AS FOLLOWS:-		
15	GALS	C.O., CCC CO. # 251 CAMP TVA-P-4, NITRATE PLANT, ALA.	2587	$3.88
15	"	C.O., CCC CO. #25 CAMP F-4, MOULTON, ALA. 16 MI. SOUTH	2587	3.88
15	"	C.O., CCC CO. #283 CAMP TVA-P-5, NITRATE PLANT, ALABAMA	2587	3.88
15	"	C.O., CCC CO. # 285 CAMP TVA-2- NITRATE PLANT, ALA.	2587	3.88
15	"	C.O., CCC CO. #286 CAMP TVA -6-ATHENS, GA.	2587	3.88
15	"	C.O., CCC CO. #463 CAMP F-1, MOULTON, ALA. (6 MI.SOUTH)	2587	3.88
15	"	C.O., CCC CO. #463 CAMP MISS. F-19, WATERFORD, MISS.	2525	3.79
15	"	C.O., CCC CO. #464, CAMP F-2 DANVILLE, ALA.R.F.D.#4(5 MI.S.W.)	2587	3.88
15	"	C.O., CCC CO. #464 CAMP MISS. F-17, OXFORD, MISS.	2525	3.79
15	"	C.O., CCC CO. #465 CAMP P-59, NORTHPORT, ALA. (18 MI.N.)	2587	3.88
		C.O., CCC CO. #465 CAMP ALA. SP-7, MUNFORD, ALA.	2537	3.81

15	GALS.	C.O., CCC CO. #468 CAMP SP-2, OXFORD, ALA. (7MI.S.W.)	2337	$3.51
15	"	C.O., CCC CO. #472 CAMP SP-5, FORT PAYNE,ALA.	.2587	3.88
15	"	C.O., CCC CO. #473 CAMP P-53, BATESVILLE, MISS.1½MI.S.W.)	.2525	3.79
15	"	C.O., CCC CO. #477 CAMP P-59, BLUE MOUNTAIN, MISS.	.2525	3.79
15	"	C.O., CCC CO. #480 CAMP P#56, ABBEVILE, MISS.(1 MI.EAST).	.2525	3.79
15	"	C.O., CCC CO. #480 CAMP MISS. SP-4,LOUISVILLE, MISS	.2525	3.79
15	"	C.O., CCC CO. #481 CAMP S-57, OXFORD, MISS.	.2525	3.79
15	"	C.O., CCC CO. #482 CAMP SP-2, TUPELO,MISS (10 MI.S.W.)	.2525	3.79
15	"	C.O., CCC CO. #486, CAMP F-9 POTTS CAMP, MISS (TEMPORARY) 4 MI. FROM MYRTLE, MISS.	.2525	3.79
15	"	C.O., CCC CO. #487 CAMP S-62, BESSEMER, ALA.	.2212	3.32
15	"	C.O., CCC CO. #487 CAMP ALA. SP-8, PELHAM,ALA.	.2587	3.88
15	"	C.O., CCC CO. #489, CAMP P-62 ASHLAND,MISS.,SOUTH EDGE IN CITY	.2525	3.79
15	"	C.O., CCC CO. #1403, CAMP F-3 HALEYVILLE, ALA.(14 MI. N.E.)	.2587	3.88
15	"	C.O., CCC CO. #1405, CAMP SES 1-A, DADEVILLE, ALA.(4 MI. S.E.)	.265	3.98
15	"	C.O., CCC CO. #2424 CAMP P-58, HOLLY SPRINGS, MISS.	.2525	3.79
15	"	C.O., CCC CO. #2426, CAMP TVA-P-3, TOWN CREEK, ALA. (9 MI. N.W.)	.2587	3.88
15	"	C.O., CCC CO. #444, CAMP P#57, GLENCOE, ALA. (2 MILES FROM GADSDEN, ALA.)	.2462	3.69
15	"	CO., CCC CO. #444, CAMP ALA. SES-3-, CAMP HILL, ALA.	.2587	3.88
			TOTAL	$920.32

5 GAL. CAN DELIVERY: CONTRACTOR'S POSTED TANK WAGON PRICE AT TIME OF DELIVERY,WITH MAXIMUM PRICE AS SHOWN IN THIS SCHEDULE. PRICE INCLUDES COST OF 5 GALLON CONTAINER.
DELIVERY OF KEROSENE: AT THE RATE OF 5 GALLONS (ONE DELIVERY) PER MONTH BETWEEN OCT. 1 AND DEC. 31, 1934 AS CALLED FOR ON DELIVERY ORDER ISSUED BY THE CONSIGNEE.

6. Variations: Quantities listed hereon are subject to increase (or decrease) of not to exceed ------ %.

7. Schedule of deliveries: AS SHOWN IN [redacted] SHEETS 2 AND 3

ANY QUANTITY NOT CALLED FOR IS AUTOMATICALLY CANCELLED.

8. Shipping directions--including packing and marking:

AS INDICATED IN SHEETS 1, 2, AND 3.

ACCOUNTABLE OFFICE: C.M., DISTRICT D. CCC., FORT MC CLELLAN, ALA.

DELIVERIES NOT MEETING SPECIFICATIONS WILL BE RETURNED TO THE CONTRACTOR AT HIS EXPENSE AND CONTRACTOR WILL BE REQUIRED TO REPLACE THE QUANTITIES REJECTED WITH LIKE QUANTITIES OF SPECIFICATION QUALITY, WITHOUT COST TO THE US. GOVT.

9. Payment of bills: Render invoices in triplicate, quoting this contract number, to the FINANCE OFFICER, FT. MC PHERSON, GA. AND WHO SHOULD FURNISH THIS OFFICE A COPY OF EACH VOUCHER PAID HEREUNDER.

To insure prompt payment the original copy of the invoice should be certified as follows: "Certified correct, payment not received.

_____(Name of contractor)

By_____(Signer's name & title)"

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"B"

10. Terms of payment: Discount will be allowed for prompt payment as follows: SEE 1ST SHEET

10 calendar days Net%; 20 calendar days NET %; 30 calendar days NET%.

11. Bond: WAIVED. Name and address of guarantor(s) ——— Amount $ ——— Annual Bond No ———

12. The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to procurement authority FD 804 P1-0236 A8815-45 the available balance of which is sufficient to cover cost of same.

13. Serial number of Invitation for Bids RM 626-35-72(BID #8) OPENED 9/26/34

14. Serial number of Requisition CCC 5403-131-45

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War Department
Q.M.C Form 309
Authorized Nov. 1c, 1927

OFFICE IDENTY. 2437

SCHEDULE OF SUPPLIES "F"

Must be filled in and attached to all Quartermaster Corps contracts for supplies.

1. Contract number and date W 626 ECF-379, DATED OCT. 1, 1934.

2. Contracting officer, name J. D. GOODRICH, MAJOR Q.M.C.
Address 1ST AVE. & 58TH ST., BROOKLYN, N.Y.

3. Contractor, name THE TEXAS COMPANY
Address 135 EAST 42ND STREET, NEW YORK, NEW YORK
Factory name and location

4. F. O.B. delivery and inspection points AS INDICATED BELOW

5. Articles or services: INSPECTION: TO BE HANDLED BY CONSIGNEES

APPROX. QUANTITY	UNIT	DESCRIPTION AND SPECIFICATION	UNIT PRICE	EST. TOTAL

THE PRICE INDICATED ON THIS SCHEDULE IS THE TOP PRICE TO BE PAID DURING THE DURATION OF THE CONTRACT, HOWEVER, THE COMMODITY CONTRACTED FOR WILL BE BILLED BY THE CONTRACTOR AT THE PRICE IN EFFECT ON THE DATE OF DELIVERY OR SHIPMENT BUT IN NO EVENT WILL THE BILLING PRICE EXCEED THE PRICE STATED IN THIS SCHEDULE. DELIVERIES NOT MEETING SPECIFICATIONS WILL BE RETURNED TO THE CONTRACTOR AT HIS EXPENSE AND CONTRACTOR WILL BE REQUIRED TO REPLACE THE QUANTITIES REJECTED WITH LIKE QUANTITIES OF SPECIFICATION QUALITY, WITHOUT COST TO THE U.S. GOVT.

GASOLINE, MOTOR, US GOVERNMENT, SPEC. VV-G-101. TO BE FURNISHED TO VARIOUS REFORESTATION CAMPS THROUGHOUT THE STATES OF FLORIDA AND MISSISSIPPI, AND ALABAMA, FOR CIVILIAN CONSERVATION CORPS, IN QUANTITY, PRICE AND DELIVERY AS INDICATED IN SHEETS 2 AND 3.

PRICE TO BE PAID FOR GASOLINE DOES NOT INCLUDE STATE TAX.

TANK WAGON DELIVERY: CONTRACTOR'S POSTED TANK WAGON PRICE AT TIME OF DELIVERY SUBJECT TO DISCOUNTS BELOW, WITH MAXIMUM PRICES AS SHOWN IN THIS SCHEDULE.

DISCOUNTS:		"INDIAN" BELOW 60 OCTANE	"FIRE CHIEF" ABOVE 60 OCTANE
DELIVERIES:	FROM 3,000 to 10,000 GALS. PER MO.	.005	.01
	OVER 10,000 GALS. PER MONTH	.01	.02

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NO DISCOUNT MAY BE PAID OR ALLOWED AT TIME OF DELIVERY BUT SAME SHALL BE DUE AND PAYABLE WITHIN 25 DAYS FROM THE END OF THE MONTH IN WHICH DELIVERIES ARE MADE.
THE TERM "MONTH" AS USED IN THIS CONTRACT FOR THE PURPOSE OF DISCOUNTS MEANS A CALENDAR MONTH. DISCOUNTS FOR DELIVERIES DURING FRACTIONAL PARTS OF CALENDAR MONTHS AT THE COMMENCEMENT AND ENDING OF THE CONTRACT PERIOD SHALL BE COMPUTED PROPORTIONATELY.
TANK WAGON DELIVERY DIRECT TO CAMP

2000	GALS.	C.O., CCC CAMP ALA SP-1 (FIRE CHIEF) LOCATED NEAR HACODA, ALA.	.1783	$356.60
2000	"	C.O., CCC CAMP ALA SP-3 (FIRECHIEF) LOCATED NEAR URIAH, ALA.	.1783	356.60
2000	"	C.O., CCC CAMP ALA SP-6 (FIRE CHIEF) LOCATED NEAR FOLEY, ALA.	.1783	356.60
2000	"	C.O., CCC CAMP ALA P*54 (FIRE CHIEF) LOCATED NEAR BREWTON, ALA.	.1721	344.20
2000	"	C.O., CCC CAMP ALA P-55 (FIRE CHIEF) LOCATED NEAR VREDENBURGH, ALA.	.1783	356.60
2000	"	C.O., CCC CAMP ALA P-60 (FIRE CHIEF) LOCATED NEAR CHATOM, ALA.	.1783	356.60
2000	"	C.O., CCC CAMP ALA P-61 (FIRE CHIEF) LOCATED NEAR BAY MINETTE, ALA.	.1533	306.60
2000	"	C.O., CCC CAMP ALA P-63 (FIRE CHIEF) LOCATED NEAR JACKSON, ALA.	.1783	356.60
2000	"	C.O., CAMP FLA F-3- CCC (FIRE CHIEF) LOCATED NEAR NICEVILLE, FLA.	.1636	327.20
2000	"	C.O., CCC CAMP FLA P-70 (FIRE CHIEF) LOCATED NEAR SCOTT'S FERRY, FLA.	.1636	327.20
6000	"	Q.M., DISTRICT "B", HDQRS. (INDIAN) AT FORT BARRANCAS, FLA.	.10883	652.98
2000	"	C.O., CCC CAMP MISS F-4 (FIRE CHIEF) LOCATED NEAR OVETT, MISS.	.16	320.00
2000	"	C.O., CCC CAMP MISS F-12(INDIAN) LOCATED NEAR BILOXI, MISS.	.1225	245.00

NO DELIVERIES OF LESS THAN 50 GALLONS SHALL BE MADE.

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SERVICE STATION DELIVERY DIRECT TO CONSIGNEE'S MOTOR EQUIPMENT AT CONTRACTOR'S SERVICE STATIONS FOR CAMPS THROUGHOUT THE STATE OF ALABAMA.

SERVICE STATION DELIVERY: CONTRACTOR'S POSTED SERVICE STATION PRICE AT TIME AND PLACE OF DELIVERY WITH MAXIMUM PRICES AS SHOWN IN THIS SCHEDULE. "FIRE CHIEF" GASOLINE SHALL BE FURNISHED.

9000	GALS.	FOR CAMPS LISTED ON SHEET 3.	.1975	1777.50
			TOTAL	$6440.25

C.O., CCC CAMP ALA SP-1
LOCATED NEAR HACODA, ALA.

C.O., CCC CAMP ALA SP-3
LOCATED NEAR URIAH, ALA

C.O., CCC CAMP ALA SP-6
LOCATED NEAR FOLEY, ALA.
C.O., CCC CAMP ALA S-52.
LOCATED NEAR CHUNCHULA, ALA.

C.O., CCC CAMP ALA S-53
LOCATED NEAR FLORALA, FLA.

C.O., CCC CAMP ALA P-54
LOCATED NEAR BREWTON, ALA.

C.O., CCC CAMP ALA P-55
LOCATED NEAR VREDENBURGH, ALA.

C.O., CCC CAMP ALA P-61
LOCATED NEAR BAY MINETTE, ALA.

C.O., CCC CAMP ALA P-63
LOCATED NEAR JACKSON, ALA.

NOTE: IN COMPUTING DELIVERIES TO DETERMINE TANK WAGON QUANTITY DISCOUNT EARNED, DELIVERIES OF FIRE CHIEF AND INDIAN GASOLINE ARE TO BE ADDED SEPARATELY, EACH AS IF NO DELIVERY OF THE OTHER PRODUCT HAD BEEN MADE.

6. Variations: Quantities listed hereon are subject to increase (or decrease) ~~not~~ not to exceed ------%.

BETWEEN NOV. 1 AND DEC. 31, 1934, AS CALLED FOR

7. Schedule of deliveries: ON DELIVERY ORDERS ISSUED BY THE CAMP COMMANDER. ANY QUANTITY NOT CALLED FOR IS AUTOMATCALLY CANCELLED.

7a. THIS CONTRACT IS FOR GENERAL UTILIZATION AT THE STATION NAMED HEREIN: ALL CALLS ON CONTRACTOR OR ORDERS FOR DELIVERY OF SUPPLIES HEREUNDER, ISSUED BY THE CONSIGNEE WILL CONTAIN THE CERTIFICATE AS TO AVAILABILITY OF FUNDS QUOTING THE PROCUREMENT AUTHORITY NUMBER TO BE USED IN MAKING PAYMENTS. PROCURELENTS AUTHORITIES APPLICABLE:

FD 804 P1-0236 A8815-45
FD 804 P1-0205 A8815-45
FD 804 P1-0230 A8815-45
FD 804 P1-0282 A8815-45

8. Shipping directions--including packing and marking:

AS INDICATED IN SHEETS 2 AND 3.

ACCOUNTABLE OFFICE: Q.M., DISTRICT "8" CCC FT. BARRANCAS, FLA.

9. Payment of bills: Render invoices in triplicate, quoting this contract number, to the FINANCE OFFICER: FT. MC PHERSON, GA. AND WHO SHOULD FURNISH THIS OFFICE COPY OF EACH VOUCHER PAID HEREUNDER.

To insure prompt payment the original copy of the invoice should be certified as follows: "Certified correct, payment not received.

_____(name of contractor)

By_____(Signer's name and title)"

10. Terms of payment: Discount will be allowed for prompt payment as follows: SEE 1ST SHEET
10 calendar days NET%; 20 calendar days, NET%; 30 calendar days, NET%.

11. Bond: WAIVED. Name and address of guarantor(s) _____ Amount, $_____ Annual Bond No _____.

12. The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to procurement authority: SEE PAR. 7A ABOVE, THE AVAILABLE BALANCE OF which is sufficient to cover cost of same.

13. Serial number of Invitation for Bids: RM 626-35-72 (Bid #8) OPENED 9/26/34

14. Serial number of Requisition: CCC 137-1-5.

(The contract also contains provisions for the sale and delivery by the Texas Company to the United States of gasoline and other petroleum products in states other than Alabama, which provisions are, by agreement of the parties, eliminated from the record.)

("Instructions to Bidders" and the other concluding provisions of this contract are substantially the same as "Instructions to Bidders" and the concluding portions of the contract set out and copied at length in Exhibit 3, which sheets and provisions of said contract, Exhibit 4, are, by agreement of the parties, eliminated from the record, except that said contract is dated and executed in the manner hereinafter set out.)

[fol. 158] In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

The United States of America, by (Signed) J. D. Goodrich (Official title:) Major, Q. M. Corps. The Texas Company, Contractor, by (Signed) Frank J. Shipman, Manager. (Business address:) 135 East 42nd Street, New York, N. Y.

Two witnesses: T. M. Thomas. R. H. Stoyle.

I, W. G. Elicker, certify that I am the Assistant Secretary of the corporation named as contractor herein; that Frank J. Shipman who signed this contract on behalf of the contractor, was then Manager of said corporation; that said contract was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

(Signed) W. G. Elicker, Asst. Secretary. (Corporate Seal.)

[fol. 159] EXHIBIT "5"

United States Department of the Interior,

Office of the Secretary,

Washington

Feb. 25, 1935.

The Texas Company, 135 East 42 Street, New York City, N. Y.

GENTLEMEN:

With reference to your bid of February 11 which was opened at this office on February 13, covering the proposed purchase of gasoline and lubricating oil for Interior Department activities, please be advised that you have been awarded a contract covering all items as listed in the advertisement of February 1.

This contract, the number of which is I-S-1615, calls for the delivery from your service stations located in all 48 states and the District of Columbia, of Texaco Fire Chief

gasoline in quantities as specified at the posted service station price in effect at time and place of delivery, subject to the maximum prices for each State as quoted in your proposal. Texaco Ethyl gasoline is to be furnished in the 20 States as listed in the advertisement referred to above at the posted service station price for this grade of gasoline in effect at time and place of delivery, subject to the maximum prices as quoted in your bid.

Texaco crack-proof motor oil is to be furnished at the posted retail service station price in effect at time and place of delivery with a guarantee that the maximum price chargeable will not exceed $.3125 per quart. The prices for all products quoted herein include only the 1¢ Federal Tax, and do not include any State, local or other non-applicable Taxes. This contract will cover the period from March 1, to June 30, 1935.

The Geological Survey, the Federal Emergency Administration of Public Works, and the Division of Investigations have signified their intentions of participating in this contract, and have been notified of the award under even date. Each Bureau will contact your office directly, and it is hoped that satisfactory arrangements will be made for delivering the specified products to all employees who are properly identified, and for rendering monthly invoices to each unit.

In reply, please refer to File: JRM-1935.

Very truly yours, W. B. Fry, Purchasing Officer.

Purchasing Office.
Procurement.
J. R. M.

Memorandum for Geological Survey

Feb. 25, 1935.

[fol. 160] This will refer to your Requisition No. 132 requesting this Office to execute contracts for the service station delivery of gasoline and oil for use by your field parties during the current Fiscal Year. At present purchases are being made under five contracts, all of which expire on February 28.

A new contract has been made with the Texas Company of New York City covering the delivery of gasoline and

lubricating oil in all 48 States and the District of Columbia for the balance of the current Fiscal Year, beginning on March 1.

The contractor will furnish Texaco Fire Chief gasoline in all States at the posted service station price in effect at time and place of delivery, subject to the maximum prices quoted on the attached sheet. These maximum prices include 1¢ Federal Tax, but do not include any local or State taxes.

In the States where high test gasoline was requested, Texaco Ethyl gasoline will be furnished at the posted service station price in effect at time and place of delivery, subject to the maximum price quoted on the attached sheet. These maximum prices for the high test gasoline include only the 1¢ Federal Tax.

The contractor will furnish Texaco crack-proof motor oil in grades SAE 20, 30, 40 and 50, at the posted service station price in effect at time and place of delivery, with a guarantee that the maximum price chargeable during the contract period will not exceed $.3125 per quart including the Federal Tax. For your information the prevailing service station price for this oil at all points in the country is $.26 per quart including the Federal Tax.

The contractor has been notified of this award under even date, copy of which letter you will receive. The products covered by this contract will be furnished your field parties upon their presentation of the proper identification card, and invoices will be rendered monthly by the Company.

You will be furnished with 8 copies of the contract at an early date, number of which is I-S-1615.

W. B. Fry, Purchasing Officer.

Enclosure 540888
2-mb-21 Copy to: Texas Co., 135 E. 42nd St., N. Y. City.

Purchasing Office.
Procurement.
J. R. M.

Memorandum for Division of Investigations

Feb. 25, 1935.

With reference to your memorandum of February 11 requesting that employees of your Oil Enforcement Unit

be permitted to participate in the gasoline and oil contracts to be executed by this Office for the Geological Survey, please be advised that a contract has been made with the Texas Company, New York City, covering the service station delivery of these products in all 48 States, and in the District of Columbia. Purchases under same may be made during the period from March 1, to June 30, 1935.

The contract specifies the delivery in all 48 States and in the District of Columbia, of Texaco Fire Chief gasoline at the posted service station price in effect at time and place of delivery, subject to the maximum prices for each [fol. 161] State as listed on the attached sheet. Texaco crack-proof motor oil, in all grades, will be furnished at the prevailing service station price in effect at time of delivery with a guaranteed maximum price of not to exceed $.3125 per quart. All prices quoted herein include only 1¢ Federal Tax, and do not include any State, local or other non-applicable Taxes.

Deliveries will be made from all Texaco stations to any of your employees who are properly identified by Standard Form 44, and invoices will be rendered monthly by the contractor.

It will be necessary for you to contact the Texas Company, New York City, direct in order to complete final arrangements.

W. B. Fry, Purchasing Officer.

Enclosure 540891.
2-mb-21.
Copy to: Texas Company, 135 East 42 St., N. Y. C.

Purchasing Office.
Procurement.
J. R. M.

Memorandum for Federal Emergency Administration of Public Works

Feb. 25, 1935.

With further reference to your memorandum of January 17, requesting that your field officers be included in the gasoline and oil contracts to be executed for the Geological Survey, please be advised that a contract has been made with the Texas Company of New York City, covering

the delivery of these products in all 48 States and the District of Columbia. Purchases under this contract may be made during the period from March 1 to June 30, 1935.

The contract specifies the delivery in all 48 States and in the District of Columbia, of Texaco Fire Chief gasoline at the posted service station price in effect at time and place of delivery, subject to the maximum prices for each State as listed on the attached sheet. Texaco crack-proof motor oil, in all grades, will be furnished at the prevailing service station price in effect at time of delivery with a guaranteed maximum price of not to exceed $.3125 per quart. All prices quoted herein include only 1¢ Federal Tax, and do not include any State, local or other non-applicable Taxes.

Deliveries will be made from all Texaco stations to any of your employees who are properly identified by Standard Form 44, and invoices will be rendered monthly by the contractor.

It will be necessary for you to contact the Texas Company, New York City direct in order to complete final arrangements.

W. B. Fry, Purchasing Officer.

Enclosure 540890.
2-mb-21.
Copy to: Texas Company, 135 East 42nd St. N. Y. C.

Standard Form No.33
Approved by the President June 16, 1927.

STANDARD GOVERNMENT SHORT FORM CONTRACT

Contract No._____

DEPARTMENT OF THE INTERIOR (SUPPLIES) Purchasing Office

Washington, D. C. (Department of Establishment)

February 1, 1935. (Office)

(Address)

(Date)

One copy only

INVITATION

Sealed bids, in Room 144 10:00 p. February 13, 1935, subject to the conditions on the reverse hereof, will be received at this office until _____ o'clock _____ m., _____ and then publicly opened, for furnishing the following supplies, and/or services, delivery, GASOLINE AND LUBRICATING OIL for INTERIOR DEPARTMENT ACTIVITIES

W. A. Fry (Name) Purchasing Officer (Title)

ITEM NO.	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
	The attached conditions on Standard Form No. 36 form a part of this advertisement. The Certificate of Compliance on the reverse side thereof must be signed and dated. Sign and date your bid on the reverse side of this form. The attention of bidders is invited to the following Schedule of gasoline and oil requirements of Field Parties of the Geological Survey and of the field forces of the Public Works Administration. All quantities listed herein are estimated, and the Government reserves the right to order only such quantities as are actually needed, and to purchase any additional quantities that might be required. Nothing herein is intended to conflict with the provisions of any existing Code for the Petroleum Industry, and if such a conflict becomes apparent the provisions of this advertisement will be waived to that extent. THE GOVERNMENT RESERVES THE RIGHT TO MAKE THE AWARD ON BOTH GRADES OF GASOLINE AND THE LUBRICATING OIL ON AN ALL OR NONE BASIS FOR DELIVERY WITHIN ANY INDIVIDUAL STATE. ALL PRICES QUOTED HEREIN SHALL INCLUDE ANY FEDERAL TAX BUT ARE NOT TO INCLUDE ANY STATE OR MUNICIPAL TAXES. ANY CONTRACTS RESULTING FROM THIS ADVERTISEMENT WILL COVER THE PERIOD OF FROM MARCH 1st TO JUNE 30th, 1935.				

(Continued on _____ sheets of Standard Form 36, attached hereto, each of which should bear the name of the bidder.)

CONDITIONS

1. The Government reserves the right to reject any and all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. In case of error in the extension of prices in the bid, the unit prices will govern.
2. Time, in connection with discount offered, will be computed from date of delivery of the supplies to carrier when final inspection and acceptance are

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at point of origin, or from date of delivery at destination or port of embarkation, when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter date is later than the date of delivery.

3. In case of default of the contractor, the Government may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby.

4. No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom unless it be made with a corporation for its general benefit.

BID

New.York,.February.11,.1935
(Date)

In compliance with the above invitation for bids, and subject to all the conditions thereof, the undersigned offers and agrees, if this bid be accepted within 20 days from the date of the opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, and, unless otherwise specified, within 1 days after receipt of order, delivery AS SPECIFIED IN THIS PROPOSAL.

Discounts will be allowed for prompt payment as follows: 10 calendar days, Net per cent; 20 calendar days, Net per cent; 30 calendar days, Net per cent.

THE TEXAS COMPANY (Bidder) — 135 East 42nd St., New York, N. Y. (Address)

By _____ (Member of firm or person authorized to sign bids for corp.) — Title MANAGER

ACCEPTANCE

_____ (Date)

Accepted as to items numbered _____

_____ (Name), _____ (Title)

INSTRUCTIONS TO BIDDERS

1. Samples of items, when required, must be furnished, free of expense, prior to the opening of bids, and, if not destroyed, will, upon request, be returned at the bidder's expense.
2. Prices should be stated in units of quantity specified with packing included.
3. Time of proposed delivery must be stated in definite terms. If time varies for different items the bidder shall so state.
4. If the item bid upon has a trade name or brand, such trade name or brand must be stated in the bid.
5. To insure prompt payment, bills should be certified as follows: "I certify that the above bill is correct and just, and that payment therefor has not been received."

Note.--This form is adaptable generally for use whether or not a formal contract is required.

ITEM NO.	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT Dollars	AMOUNT Cents

The following certificate form shall be signed and submitted by all bidders with all bids involving expenditure of Government funds (whether Federal or non-Federal), in accordance with Executive Order No. 6646, dated March 14, 1934. Only bids containing or accompanied by such certificate shall be considered or accepted. Bidders shall also require subcontractors (including suppliers) to sign similar certificates before making awards to or purchases from such subcontractors. Such certificate may be accepted as evidence that the contractor is complying with the applicable approved code or codes offair competition adopted under title I of the National Industrial Recovery Act for the trade or industry or subdivision thereof involved, or, if there be no such approved code of fair competition, with the President's Reemployment Agreement.

CERTIFICATE OF COMPLIANCE

It is hereby certified that the undersigned is complying with and will continue to comply with each approved code of fair competition to which he is subject, and/or if engaged in any trade or industry for which there is no approved code of fair competition, then as to such trade or industry that he has become a party to and is complying with and will continue to comply with an agreement with the President under section 4 (a) of the National Industrial Recovery Act (President's Reemployment Agreement) and that all other conditions and requirements of Executive Order No. 6646, dated March 14, 1934, are being and will be complied with.

Provided , that where supplies are purchased that are not mined, produeced, or manufactured in the United States (see Sec. 2, title III, of the act approved March 3, 1933, Public No. 428, 72d Cong.), the special or general code of fair practice shall apply to that portion of the contract executed within the United States.

February 11, 1935 (Date)

THE TEXAS COMPANY (Individual or firm name)

By _____ MANAGER

STANDARD GOVERNMENT FORM OF CONTINUATION SCHEDULE FOR STANDARD FORM 31 or 33. (Supplies)

ITEM NO.	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT Dollars	AMOUNT Cents

1. DOMESTIC MATERIALS.—It is hereby certified that in the event award is made to the undersigned, the unmanufactured articles or materials furnished the United States will have been mined or produced in the United States; and the manufactured articles, materials, and supplies, will have been manufactured in the United States from articles, materials mined, produced, or manufactured, as the case may be, in the United States, except as noted below or otherwise indicated in this bid.

2. FEDERAL TAX.—If any Federal sales or other Federal Tax is imposed or changed after the date set for the opening of this bid and is made applicable to and paid by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly.

3. CERTIFICATE OF COMPLIANCE.—No bid will be considered which is not accompanied by a certificate of compliance with Executive

Order No. 6646. Sign and date the certificate on the reverse side of this form, in the spaces proved therefor.

4. CONTACTUAL CLAUSE.--In the event this bid is accepted and thereby becomes a contract, the following paragraph will be in full force and effect:

"The contractor shall comply with each approved code of fair competition to which he is subject, and if he is engaged in any trade or industry for which there is no approved code of fair competition, then as to such trade or industry with an agreement with the President under section 4 (a) of the National Industrial Recovery Act (President's Reemployment Agreement), and the United States shall have the right to cancel this contract for failure to comply with this provision and make open-market purchases or have the work called for by this contract otherwise performed at the expense of the contractor, and the contractor shall not accept or purchase for the performance of this contract or purchase order or enter into any subcontracts for any articles, materials, or supplies, in whole or in part produced or furnished by any person who shall not have certified that he is complying with and will continue to comply with each code of fair competition which relates to such articles, materials or supplies, and/or in case there is no approved code for the whole or any portion thereof then to that extent with an agreement with the President as aforesaid."

_____
(Bidder)

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STANDARD GOVERNMENT FORM OF CONTINUATION SCHEDULE FOR STANDARD FORM 31 OR 33

(SUPPLIES)

ITEM NO.	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT Dollars	Cents
	REQUIREMENTS BY STATES FOR GASOLINE (STANDARD GRADE)			MAXIMUM PRICE		
1.	Alabama	700	gals.	$.185		
	(Requirements as to other states omitted by agreement)					
	THE TEXAS COMPANY (Bidder)					
	THE ABOVE QUANTITIES SHALL MEET THE REQUIREMENTS OF FEDERAL SPECIFICATION VV-G-101. It is understood however that no proposals offering delivery of other than what is commonly known as second grade or Standard grade gasoline will be considered. The price shall be Seller's posted retail service station price for TEXACO FIRE CHIEF GASOLINE in effect at time and place of delivery, including the Federal Tax, but exclusive of any State, County of Municipal Tax. In no event, however, will the price charged during the contract period, exceed the maximum prices quoted herein, including the Federal Tax. THE TEXAS COMPANY (Bidder)					

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STANDARD GOVERNMENT FORM OF CONTINUATION SCHEDULE FOR STANDARD FORM 31 OR 33

(SUPPLIES)

ITEM NO.	ARTICLES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT Dollars	AMOUNT Cents
	REQUIREMENTS BY STATES FOR GASOLINE (HIGH TEST)					
a-1	Alabama	280	gals.	$.205		
	(Requirements as to other states omitted by agreement)					
	THE ABOVE QUANITITES SHALL MEET THE REQUIREMENTS OF FEDERAL SPECIFICATION NO. VVM571.					
	It is understood that the gasoline purchased under this specification will contain Tetraethyl Lead and shall be what is commonly known as high test gasoline.					
	The price shall be Seller's posted retail service station price for TEXACO ETHYL GASOLINE in effect at time and place of delivery, including the Federal Tax, but exclusive of any State, County or Municipal Tax. In no event, however, will the price charged during the contract period, exceed the maximum prices quoted above, including the Federal Tax.					
	THE TEXAS COMPANY. (Bidder)					

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[fol. 166½] United States Department of the Interior

Office of the Secretary

For the Information of Bidders

The Administrator for Industrial Recovery issued an order June 12, 1934, which is quoted below for your information and guidance.

"Order

"'Granting Limited Exemption from Provisions of Codes of Fair Competition in Connection with Quotations Made to Governmental Agencies

"'Administrative Order No. X—48

"'Whereas, certain provisions of Codes of Fair Competition, approved under Title I of the National Industrial Recovery Act, are in conflict with statutory provisions or well-established procedure relating to contracts awarded by the United States, the District of Columbia, and the various States or political subdivisions thereof (all of which are hereinafter described as Governmental agencies); and

"'It appearing to me that the exemption hereinafter granted is in furtherance of the public interest and will tend to effectuate the policy of said title of said act;

"'Pursuant to the authority vested in me under the said title of said act by Executive Orders of the President, including Executive Order No. 6543—A, dated December 30, 1933, and otherwise, it is hereby ordered that members of industry subject to codes of fair competition who bid or may bid on contracts to be awarded by Governmental agencies be and they are hereby exempted from compliance with any provisions of such codes governing the making of quotations to Governmental agencies which prohibit any of the following practices, and such members, notwithstanding such prohibitions contained in such codes may—

"'(a) Quote prices and terms of sale to Governmental agencies as favorable as those permitted to be quoted to any commercial buyer for like quantities;

"'(b) Quote definite prices or terms of sale, not subject [fol. 167] to adjustment resulting in increased costs during

the life of the contract, for definite quantities and for definite periods not to exceed three months (unless a longer period is now permitted by any such code);

"'(c) Quote definite prices and terms of sale, not subject to adjustment resulting in increased costs during the life of the contract, for indefinite quantities, and for definite periods not to exceed 6 months (unless a longer period is now permitted by any such code);

"'(d) Quote prices and terms to apply on contracts to become effective not more than 60 days from the date of the opening of bids;

"'(e) Quote prices f.o.b. point of origin and/or f.o.b. destination.

"'Provided, however, That the exemption hereby granted shall be limited to and operative only in connection with quotations made by such members to Governmental agencies; that nothing in this order contained shall operate to permit deviation from or abandonment of open price and cost protection provisions now or hereafter contained in any such code; and that nothing in this order contained shall relieve any such member at any time from duty of complying with all other provisions of such codes.'"

United States Department of the Interior

Special Contract Provisions

(To be used in connection with the Government Standard Contract Forms in the procurement of supplies from Public Works Administration Fund.)

Articles

Domestic Materials.—In the performance of this contract the contractor, subcontractors, materialmen, or suppliers shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, or supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States, except as provided in the specifications.

NRA Compliance.—The contractor shall comply with each approved code of fair competition to which he is subject, and if he is engaged in any trade or industry for which there is no approved code of fair competition, then as to such trade or industry with an agreement with the President under section 4(a) of the National Industrial Recovery Act (President's Reemployment Agreement), and the United States shall have the right to cancel this cont-act for failure to comply with this provision and make open-market purchases or have the work called for by this contract otherwise performed at the expense of the contractor, and the contractor shall not accept or purchase for the performance of this contract or purchase order or enter into any subcontracts for any articles, materials, or supplies, in whole or in part produced or furnished by any person who shall not have certified that he is complying with and will continue to comply with each code of fair competition which relates to such articles, materials, or supplies, and/or in case there is no approved code for the whole or any portion thereof then to that extent with an agreement with the President as aforesaid.

Convict Labor.—No materials manufactured or produced by convict labor shall be used or furnished in the performance of this contract.

Termination for Breach.—In the event any of the provisions of this contract are violated by the contractor or any subcontractor, the contracting officer may terminate the contract by written notice to the contractor, and purchase similar supplies in the open market or otherwise, and the contractor and his sureties shall be liable to the Government for any excess cost occasioned the Government thereby.

[fol. 168] Subcontractors.—The contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this contract to insure the fulfillment of all its provisions affecting such subcontractors.

[fol. 169] EXHIBIT 6

Invitation No. 1.

Contract No. Tss-167.

U. S. Standard Form 33 (Revised).

Approved by the Secretary of the Treasury Sept. 17, 1934.

Invitation, Bid, and Acceptance

(Short Form Contract)

Treasury Department

Treasury Building, Washington, D. C.

Secret Service Division

June 24, 1935.

Invitation

Sealed bids, in quadruplicate subject to the conditions on the reverse hereof, will be received at this office until — o'clock, June 28, 1935, and then publicly opened, for furnishing the following supplies, and/or services, for delivery in continental United States.

W. H. Moran, Chief, Secret Service.

Item No.	Articles or Services	Quantity	Unit	Unit Price	Amount Dollars	Amount Cents
1	Gasoline, lubricating oils, and other lubricants and radiator Anti-Freeze for use in government-owned automobiles of the Secret Service Division, by service station delivery throughout the continental United States, where service stations are located. All conditions of this advertisement will be incorporated as a part of any contract resulting therefrom, which shall cover the period beginning with July 1, 1935, to and including June 30, 1936. (a) Gasoline @ — per gallon.—Please see rider. All gasoline furnished under requests for "Regular" gasoline must be first grade, non-premium, to comply in					

all respects with Federal Specifications VV-G-101, and having a minimum octane rating of 65. Bids on so-called "Third Structure" gasoline will not be considered.

Where "High Test" gasoline is specified, the product bid on must be one known commercially as first grade premium gasoline, containing Tetraethyl Lead and comply in all respects with Federal Specifications VV-M-571.

(b) Motor oil @ — per gallon.—Please see rider. Bids on the lubricating oil must be on a first grade non-premium oil, and must include all grades from SAE 20, through SAE 50.

The right is reserved to order any oil within the specified limits.

Bidders must state the trade name of all gasolines and oil offered.

These requirements are for service station delivery and bids on any other type of delivery can receive no consideration. Since these products are for use by Field Employees of this Division, the ability of each bidder to make service station delivery will be taken into consideration when award is made.

Each bidder is requested to submit with his bid a list by States of Towns in which service stations are maintained and from which delivery may be made.

Bids must be submitted on complete items, and failure to do so will be cause for the rejection of any bid.

Prices quoted shall be exclusive of state or municipal taxes. This applies not only to a tax imposed directly on the consumer but also where the tax is imposed as a license fee on the dealer and in fact to any arrangement whereby the revenue of a state is increased by the purchase of gasoline and oil by the Federal Government.

All bids on gasoline or other items listed herein will therefore be at a price exclusive of any state and/or municipal tax and with no provisions for any addition thereto on account of any state or municipal tax. The [fol. 170] bidder certifies that the prices quoted herein are exclusive of any state and/or municipal tax and

that no state and/or municipal tax will be added to any of the prices quoted herein.

It is understood that the prices quoted in this bid include any Federal tax heretofore imposed by the Congress which is applicable to the material on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by the Congress after the date set for the opening of this bid and made applicable directly upon the production, manufacture, or sale of the supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly, and any amount due the contractor as a result of such a change will be charged to the Government and entered on vouchers (or invoices) as separate items.

Bids are requested on the basis that if subsequent legislation shall require observance of minimum wages and/or maximum hours of employment and/or limitation as to age of employees, in the performance of Government contracts, any contract entered into shall be subject to modification to accord with such statutory requirements to the extent authorized or required by law.

It is understood and agreed that the contractor will submit to the above named Division of the Government monthly statements in triplicate, the original to be properly certified to, as required herein, and supported by service station invoices covering each sale, each of which shall bear the signature of the individual purchaser of the U. S. Secret Service Division, and that the above named Division in turn will promptly place such statements, if correct and just, in channels for payment.

No bid will be considered which provides that the Government shall guarantee to take any definite quantity.

Bid

(Date:) New York, July 1, 1935.

In compliance with the above invitation for bids, and subject to all the conditions thereof, the undersigned offers, and agrees, if this bid be accepted within 25 days from the date of the opening, to furnish any or all of the items upon

which prices are quoted, at the price set opposite each item, f.o.b., as specified and, unless otherwise specified within 1 days after receipts of order.

Discounts will be allowed for payment as follows: 10 calendar days, Net per cent; 20 calendar days, Net per cent; 30 calendar days, Net per cent.

Bidder: The Texas Company, Address: 135 East 42nd St., New York, N. Y., by (Signature of person authorized to sign this bid:) Frank J. Shipman, Title: Manager.

Acceptance by the Government

(Date:) July 2, 1935.

Accepted as to items numbered 1—(a & b) including deliveries of anti-freeze.

Name: W. H. Moran, Title: Chief, Secret Service.

Conditions

1. The Government reserves the right to reject any or [fol. 171] all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. In case of error in the extension of prices in the bid, the unit prices will govern.

2. Time, in connection with discount offered, will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter date is later than the date of delivery.

3. In case of default of the contractor, the Government may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby: Provided, That if public necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefor shall be made at a proper reduction in price.

4. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of

this contract or to any benefit that may arise therefrom unless it be made with a corporation for its general benefit.

5. Prices bid herein include any Federal tax heretofore imposed by the Congress which is applicable to the material on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by the Congress after the date set for the opening of this bid, and made applicable directly upon the production, manufacture, or sale of the supplies covered by this bid, and are paid by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly, and any amount due the contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items.

6. Unless otherwise specified by the bidder, it is under- [fol. 172] stood and agreed that only such unmaufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced or manufactured as the case may be, in the United States shall be delivered pursuant to a contract awarded as a result of this bid.

Instructions to Bidders

1. Samples of items, when required, must be furnished, free of expense, prior to the opening of bids, and, if not destroyed, will, upon request, be returned at the bidder's expense.

2. Prices should be stated in units of quantity specified, with packing included.

3. Time of proposed delivery must be stated in definite terms. If time varies for different items the bidder shall so state.

4. Envelop-s containing bids must be sealed and marked on the upper lefthand corner with the name and address of the bidder and the date and hour of opening, and addressed as instructed.

5. To insure prompt payment, the original bill only should be certified as follows: "I certify that the above

bill is correct and just, and that payment therefor has not been received."

6. For further instructions read U. S. Standard Form 22 (Instructions to Bidders).

Instructions to Contracting Officers

1. If shipment is made by Government bill of lading, observe consolidated classification requirements so as to secure the lowest rate applicable.

2. Although this form meets the requirements of a formal contract (R. S. 3744), if the execution of a formal contract with bond is contemplated U. S. Standard Forms 31 and 32 should be used.

3. If there is not sufficient space on the schedule to list all of the items, insert at the bottom of the schedule "Continued on — sheets of U. S. Standard Form 36" and use that form also.

4. If it is definitely known that final acceptance cannot be accomplished within 10 or 20 days from date of delivery due to necessity for tests or analyses which cannot be accomplished within that time, delete, before issuance, the discount provision relating to 10 calendar days or to both 10 and 20 calendar days. The provision relating to discounts may also be deleted when funds do not become available so that payment may be made within such time limits.

5. If the contract is likely to involve patent liability, the article on patents as contained in U. S. Standard Form 32 should be used.

Rider

Motor Gasoline—Texaco Fire Chief Gasoline

Motor Oil—Texaco Motor Oil

Price paid shall be the Seller's posted retail service station price for Texaco Fire Chief Gasoline and/or Texaco Motor Oil (All Grades), in effect at time and place of delivery, including the Federal Tax, but exclusive of any State, County or Municipal Tax. In no event, however, will the prices paid by the Government during the contract

period in each state, exceed the following: Maximum prices quoted below include the Federal Tax.

State	Maximum Price Fire Chief Gasoline	Maximum Price Motor Oil
Alabama	$.1975 per gal.	$1.00 per gal.

(Items as to other states omitted from record by agreement.)

Radiator Anti-freeze.—The price paid shall be the Seller's posted retail service station price in effect at time and place of delivery. We are not indicating any maximum prices for this product, inasmuch as our posted retail service station price throughout the United States is based on competitive markets in each locality. No record of these prices are kept in this office, therefore, it is impossible to even determine a maximum price for this product. We assure you, however, that our price will at all times be competitive.

[fol. 173] The Texas Company has Service Station facilities in all principal Cities and Towns throughout the United States and has a total of approximately 45,000 Service Station outlets and are prepared to take care of your requirements satisfactorily.

[fol. 174] EXHIBIT "23"

Treasury Department,

Procurement Division,

Washington

September 27, 1935.

The Texas Company, 135 East 42nd St., New York, N. Y.

GENTLEMEN:

With further reference to your bid on gasoline submitted pursuant to specifications and proposals issued covering tank car requirements of all Federal activities in the United States there is enclosed Schedule of contracts for the Regions listed below which shows the items awarded either f.o.b. bulk plant or f.o.b. destination.

Special Condition, Schedule No. 1, is also included, and, as required by the sp-cification on which bids were submitted forms part of the contract.

This letter constitutes formal notice of acceptance of that part of your bid on which contract is based for the period October 1 to December 31, 1935.

The awards are indicated by "Tps." contract numbers shown opposite each item and all reference to the contract should refer to that number.

Regions 1, 2, 4, 5, 6.

Respectfully, H. C. Maull, Jr., Chief, Purchase Division.

Inc.

[fol. 175] Schedule No. 1

Issued by the Treasury Department,

Procurement Division, Branch of Supply, Federal Warehouse,

Washington, D. C.

Class 7.—Gasoline

Special Conditions

For the period January 1 to March 31, 1936

Tank Car, Tank Wagon, and Drum Deliveries

1. Gasolines must be in strict accordance with Federal Specifications, as follows:

Motor, United States Government—F. S. VV-G-101.

Motor-Fuel V (Proposed revision of F. S. VV-M-571, dated October 19, 1934) Two types with respect to octane number, viz.:

Octane number (min.) 65.

Octane number (min.) 75 (for use when equipment and type of service are such that fuel knock is troublesome with fuels of lower octane number).

2. Contracts executed hereunder will not include requirements of the Navy Department for marine deliveries, i. e.,

deliveries into tanks or drums of vessels at contractor's terminal or by contractor's barges in bulk or drums. The Navy Department will make contracts covering its requirements, and of other Federal activities which can participate advantageously thereunder, for marine deliveries. Navy contracts will also cover its requirements in other forms of delivery to Naval shore stations at which gasoline may be required for issued to vessels.

3. Bids on tank wagon and/or metal drum (or barrel) requirements are not solicited on the basis of individual activites for deliveries at specified locations, but are solicited on the basis for deliveries to Federal activities within a defined area, herein termed a zone—each state is divided into a number of zones, a particular zone including the counties named therefor in Schedule #2. The estimated requirements shown in Schedule #2 for tank car shipments, and tank wagon and/or drum deliveries, are given for general information only. Even though no estimated quantities may be indicated in schedule #2 for certain items for tank wagon and/or drum deliveries, bids are desired thereon. Although award may be made for shipments or deliveries, as the case may be, under an item, the Government will not be obligated to make any purchases thereunder should no activity require shipments or deliveries under the item. A contractor will be required to furnish such quantities under the item or items for which award is made that may be ordered during the contract period. It is impracticable to determine the quantifies that will be required under any item during the contract period, and for tank wagon and drum requirements to list the points of deliveries for all activities and to state the quantities required in each zone. No bid will be considered on a tank wagon and/or drum delivery item which is conditioned on one form of delivery, i. e., on either tank wagon or drum delivery only. No bid will be considered which provides that the Government shall guarantee to take any definite quantity.

4. Flat price bids will not be considered.

5. Bids must be submitted at definite maximum unit prices which the Government will be required to pay during the life on any contract executed hereunder. Only bids quoting a single maximum price for an item will be con-

sidered. Bidders may quote on any or all items herein listed. The bidder certified that the prices quoted in Schedule #2 are exclusive of any Federal, state, county or municipal tax and that no Federal, state, county or municipal tax will be added to any of the prices for deliveries made under any contract executed hereunder. As indicated on the bidding sheets of Schedule #2 for tank wagon and/or drum deliveries, bids are desire- covering deliveries [fol. 176] on a zone-wide basis bids limiting deliveries to certain counties only of a zone, or to a stipulated radius from a bulk plant, will not be considered.

6. Under any contract executed hereunder, when the contractor's open market price less Federal Tax, state, county and municipal taxes, less any applicable discount provided under the contract, at time and place of delivery under an item, is less than the maximum price therefor, the Government will pay said lower price. Each bill, or invoice, submitted shall show contractor's open market price in effect on date and place of delivery.

7. If quantity discounts are offered by a bidder they shall apply on the total monthly deliveries to all activities purchasing under any contract executed hereunder, and shall be allowed to the different activities. Contractor shall withhold rendition of monthly bills until he has definitely determined the net cost to the Government—a voucher covering deliveries on which the greatest quantity discount is not allowed must be supported by a showing *a* total deliveries during the month under the contract. Contractor shall furnish to Procurement Division a monthly statement showing the total quantity of each item purchased by each activity during each month.

8. Orders will be placed and payments made by the activity concerned.

9. Each delivery must be accompanied by a delivery ticket.

10. Tank wagon and drum requirements shall be delivered free of all delivery expense.

11. Unless otherwise stated in his bid, contractor shall be in a position to make tank wagon and drum (by truck) deliveries within 48 hours after receipt of order, and in case of shipments to deliver the same to common carrier

within 48 hours after receipt of order. If the contractor fails to complete deliveries within the time agreed upon, the Government reserves the right to purchase the delinquent portion in the open market and to charge the increased cost, if any, to the contractor.

12. When delivery in drums is ordered by an activity, it is intended that contractor's drums will usually be supplied. The contents of contractor's drums upon delivery will be immediately transferred to Government-owned containers if such are available. Contractor's drums not returned to the contractor or to a common carrier (for shipment to the contractor), within the free time allowed by the contractor, will be invoiced to and paid for by the Government at applicable price per drum. If, however, such drums in good condition are, after having been paid for, returned by the Government at the expense of the Government within 12 months after date of delivery of the commodity, the contractor will allow the price paid for each drum so returned. Drums furnished by contractor must be in accordance with Interstate Commerce Commission Specification #5.

13. When an activity orders deliveries to be made in Government-owned drums, they will be delivered by and at the expense of the Government to the contractor's plant or station. The subsequent delivery of the filled drums from the contractor's plant or station to the Government activity to be by and at the expense of the contractor.

14. The unit of quantity of gasoline for deliveries in tank wagons or drums is the gallon of 231 cubic inches, with no corrections for variations in temperatures.

15. Where bids on tank car requirements in Schedule #2 are called for f. o. b. bidder's bulk plant and also f. o. b. destination (delivery on railroad tracks of the ordering activity), the Government reserves the right to make award on either basis. For items awarded f. o. b. bidder's bulk plant, shipments will be made on Government bill of lading to be furnished by the activity concerned.

16. In determining awards for tank car items on which bidders are to quote in Schedule #2 prices f. o. b. their bulk plants, consideration will be given to transportation costs based on published rates, less land grant allowances, if any, or on lower special rates which may have been quoted

by carriers—special rates must be filed with the Procure-
[fol. 177] ment Division, Branch of Supply, Treasury Department, Washington, D. C., not later than the date of opening of bids.

17. Tank car requirements may be shipped in Government-owned cars if so directed by the activity concerned.

18. For shipments in tank cars other than Government-owned, contractor shall state on delivery ticket the capacity of the car when shell is full, the number of gallons per inch in dome, and the number of gallons for each of the first four inches out of the shell. This information must be furnished with each shipment in other than Government owned, tank cars, so that the receiving officer may be in a position to determine the quantity of gasoline in cars upon arrival. If a contractor's tank car is received more than four inches out of a shell, the receiving officer will gauge the car and determine the quantity by correspondence with contractor.

19. Contractor shall furnish with each tank car shipped, a delivery ticket showing number of gallons, temperature of gasoline and outage (in dome or shell, as the case may be) when loaded and measured.

20. The unit of quantity of gasoline for tank car shipments is the gallon of 231 cubic inches at a standard temperature of 60° F. Volume correction for the temperature at time of delivery at destination shall be as follows:

For each degree below 60° there shall be added, and for each degree above 60° there shall be deducted, .05 of one percent from the measured or gauged quantity.

21. The right is reserved to add to any contract awarded on basis tank car price f. o. b. contractor's plant, requirements for tank car shipments to destinations other than those listed in Schedule #2.

22. A contractor shall furnish analyses (giving results for the various test factors enumerated in the above stated applicable Federal Specification) which are representative of deliveries as follows:

Weekly deliveries for each grade (and type) of gasoline made by tank wagon and drum—one copy each week to the Procurement Division.

Tank car shipments—three copies for each car shipped—one copy to the Procurement Division and two copies to the activity concerned.

NOTE.—The samples tested (to obtain the above representative weekly analysis) shall be from shipments from refinery or refineries for distribution to localities where tank wagon and drum deliveries are to be made to the Government.

23. Gasoline will be sampled when, in the opinion of the Government activity concerned it is desirable to do so. Test results of a sample shall be used as representing only the quantity (delivery) actually sampled. Samples shall be taken in accordance with methods of Federal Specification VV-L-791a, which methods are reprinted, verbatim, in pamphlet issued June 1, 1935, by and may be obtained from the Branch of Supply, Procurement Division, Treasury Department. Samples will be tested by the U. S. Bureau of Standards.

24. Should test results reported by the Bureau of Standards show gasoline to not comply with the specification, the Government may, as its option:

(a) Exercise its right to reject the quantity of gasoline represented by the sample tested, or such part thereof which has not been consumed or mixed with other deliveries, and required that it shall be removed by and at the expense of the contractor promptly after notification of rejection and to require the contractor promptly to replace the quantity rejected with like quantity of specification quality without cost to the Government; or

[fol. 178] (b) For gasoline not rejected, due to the fact that it may have been mixed with other gasoline in tanks, or a portion of the delivery may have been used, or necessity requires its continued use—payment therefor shall be made at a reduction in price to be determined by the Government. (See paragraph 3 of Conditions, of Standard Form 33.) (Revised.)

Provided, however, the Government shall have the right, should test results of samples representing three or more deliveries to an activity under a contract show gasoline to be in any way inferior to contract requirements, to decline to accept additional deliveries and purchase gasoline in the

open market for delivery to such activity, in which event the contractor and his sureties shall be liable to the Government for any excess cost occasioned thereby.

25. It is understood that, under an item for tank wagon and/or drum delivery, the contractor will deliver gasoline from tank wagons or trucks directly to the fuel tanks attached to or part of trucks, tractors and other motorized equipment belonging to the military forces of the United States or of any state, when such trucks, tractors and other motorized equipment are being used on special manouvers away from their base of supply, or when such trucks, tractors and other motorized equipment are being moved from one military post to another.

26. The needs of the Bureau of Air Commerce, primarily for beacon lights, call for an unleaded gasoline of grade VV-G-101. Accordingly, contractors receiving orders from the Bureau of Air Commerce, or from any other activity must deliver unleaded VV-G-101 gasoline when so ordered.

27. Unnecessary "riders", merely duplicating conditions stated in the schedules or duplicating data entered on Standard Form 33 (Revised) or on Schedule #2 serve no useful purpose, are confusing, and are not desired. Bidders are cautioned not to attach such "riders". Should such a "rider" be attached to a bid and should it cause confusion, in the opinion, of the Government, the right to reject the bid is reserved to the Government.

28. No bid bond is required. A performance bond will be required for not less than 10 percent of the amount (estimated) of the contract.

NOTE.—Bidder may retain this Schedule—it is not necessary to return it with the three copies each of Standard Form 33 (Revised) and Schedule #2.

(Copy of this Schedule is to be incorporated in the contract.)

Schedule No. 2. Region No. 2.

Issued by the Treasury Department,
Procurement Division, Branch of Supply,
Washington, D. C.

Gasoline

Class 7

Schedule of Contracts for Tank Car Requirements in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Virginia, North Carolina, South Carolina, Tennessee.

(Region No. 2)

For the Period October 1 to December 31, 1935

1. These consolidated contracts cover the requirements of the Federal activities hereinafter listed.

[fol. 179] 2. Attached is a copy of Schedule No. 1, entitled SPECIAL CONDITIONS, which is a part of each contract.

3. The right is reserved to add to any contact, awarded on basis tank car price f. o. b. contractor's bulk plant, requirements for tank car shipments to destinations other than those hereinafter listed.

4. For an item which specifies price "f. o. b. bidder's bulk plant" the Government is to pay the freight—shipment to be on Government bill of lading. For an item which specifies price "For delivery f. o. b. destination" (delivery on tracks or railroad serving the activity) the cont-actor is to pay the freight.

5. When bids were under consideration for a f. o. b. bulk plant item, freight rates (less land grant allowances, if any) to the activity from the different bulk plants named in the bids were considered in determining award. An activity ordering shipment under a f. o. b. bulk plant contract should definitely ascertain the route via which lowest freight rate applies, consideration being given to land grant allowances, if any. If routing and freight rate are desired, they may be obtained from the Procurement Division upon application.

6. Each bill, or invoice, submitted shall show the contractor's open market price, plus Federal tax, less State, county

and municipal taxes, in effect on date and place of shipment (the bulk plant specified for the item).

7. Under an f. o. b. bulk plant contract the contractor bulk plant open market price on date of shipment, plus Federal tax, less State, county and municipal taxes, shall not exceed the maximum price stated herein for the item.

8. Under an f. o. b. destination contract the contractor's bulk plant open market price on date of shipment, plus freight (paid by the contractor), plus Federal tax, less state, county and municipal taxes, shall not exceed the maximum f. o. b. destination contract price stated herein for the item.

9. The maximum prices stated herein for the respective items include the 1¢ per gallon Federal tax and no State or local tax.

10. In column headed "Grade", the three Federal Specification gasolines are abbreviated, i. e.; G-101, for Motor, U. S. Government VV-G-101; A-65 or A-75 for Motor-Fuel A; V-65 or V-75, for Motor-Fuel V. There is no octane number requirement for the VV-G-101 gasoline. The minimum octane number requirements for the Motor-Fuel A and Motor-Fuel V gasolines are as indicated by the figures 65 and 75.

Item No.	Activity-Destination	Grade and Octane Number (Min.)	Price-Maximum Per Gal.	Tps. Contract Number
(Omitted items relate to states other than Ala. and are omitted by agree— of the parties)				
181.	Q.M., Fort McClellan, Ala.....	A–65		
	F.o.b. bidder's bulk plant.....	....	$0.07	8068
	Location of bulk plant, Mobile, Ala.			
	Railroad serving, G. M. & N.			
182.	Q.M., Maxwell Field, Ala.....	A–65		
	F.o.b. bidder's bulk plant.....	....	.07	8068
	Location of bulk plant, Mobile, Ala.			
	Railroad serving, G. M. & N.			
183.	T.V.A., Wilson Dam, Ala.....	A–65		
	F.o.b. bidder's bulk plant.....	....	.07	8068
	Location of bulk plant, Mobile, Ala.			
	Railroad serving, G. M. & N.			
187.	Q.M., Fort Benning, Ga.....	A–65		
	F.o.b. bidder's bulk plant.....	....	.07	8068
	Location of bulk plant, Mobile, Ala.			
	Railroad serving, G. M. & N.			
[fol. 180]				
189.	CCC–Q.M., Fort Oglethorpe, Ga.....	A–65		
	F.o.b. bidder's bulk plant.....	....	.07	8068
	Location of bulk plant, Mobile, Ala.			
	Railroad serving, G. M. & N.			

Contract number	Contractor	Address
Tps. 8068	The Texas Company	135 East 42nd Street, New York, N. Y.
" 8546	Sinclair Refining Company	45 Nassau Street, New York, N. Y.
" 8040	Gulf Refining Company	1515 Locust Street, Philadelphia, Pa.
" 8065	Standard Oil Co., Inc. in Kentucky	426 West Bloom Avenue, Louisville, Ky.
" 8547	Atlantic Refining Company	260 South Broad Street, Philadelphia, Pa.
" 8548	American Oil Company	American Building, Baltimore, Md.
" 8067	Standard Oil Company of New Jersey	26 Broadway, New York, N. Y.

Discounts

Tps. 8068 The Texas Company:
Time discount, 1 percent, 10 days.
" 8546 Sinclair Refining Company:
Time Discount, 1 percent, 10 days.
" 8040 Gulf Refining Company:
Time discount, 1 percent, 10 days.
" 8065 Standard Oil Co., Inc. in Kentucky:
Time discount, 1 percent, 10 days.
" 8547 Atlantic Refining Company:
Time discount, 1 percent, 10 days.
" 8548 American Oil Company:
Time discount, 1 percent, 10 days.
" 8067 Standard Oil Company of New Jersey:
Time discount, 1 percent, 10 days.

Treasury Department,

Procurement Division,

Washington, D. C.

Invitation No. 323-G-8

Region #2

New York, August 12, 1935.

Mr. Sherman Ford, Washington, D. C.

DEAR SIR:

We are attaching hereto copy of proposal which we are submitting to the above, proposal opening August 13th, covering the Motor Gasoline requirements of all Federal Activities in Region #2 during the three month period October 1 to December 31, 1935.

We would appreciate your arranging with the Bonding Company to furnish us with complete competitive information on these proposals.

Yours very truly, (Signed) Frank J. Shipman.

[fol. 181] 33

Invitation No. 323-G-8.
Contract No. ———

Invitation, Bid, and Acceptance

(Short Form Contract)

(Department or establishment:) Treasury Department, Procurement Division,

(Office or station:) Branch of Supply

(Address:) Federal Warehouse, Washington, D. C.

(Date:) July 29, 1935.

Invitation

Sealed bids, in Triplicate subject to the conditions on the reverse hereof, will be received at this office until 10:00

o'clock, a. m., August 13, 1935, and then publicly opened, for furnishing the following supplies, and/or services, for delivery *at* during the period October 1 to December 31, 1935, both dates inclusive.

(Name:) H. C. Maull, Jr., (Title:) Chief, Purchase Division.

Item No.	Articles or services.	Quantity.	Unit.	Unit Price.	Amount. Dollars.	Amount. Cents.

Region No. 2

Gasoline

To meet the requirements as specified in Schedule No. 1 and Schedule No. 2 which are a part of this invitation, if all Federal activities (except as stated in Schedule No. 1) for deliveries in tank wagon and drums, and of those activities listed in Schedule No. 2 for shipments in tank cars, in the States of Alabama, Louisiana, South Carolina, Arkansas, Mississippi, Tennessee, Virginia, Florida, Georgia, North Carolina.

NOTE.—Service station deliveries or deliveries by barges and vessels, are not included in this invitation.

Bid

(Date:) —— —, ——.

In compliance with the above invitation for bids, and subject to all the conditions thereof, the undersigned offers, and agrees, if this bid be accepted within — days from the date of the opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, f. o. b., see above and, unless otherwise specified within — days after receipt of order.

Discounts will be allowed for payment as follows: 10 calendar days — percent; 20 calendar days, — percent; 30 calendar days, — percent.

T/W & S/B—Net 30 days
T/C 1% 10 days

Bidder: The Texas Company, Address: 135 E. 42nd St., New York, N. Y., by (Signature of person authorized to sign this bid:) —— ——, Title: Manager.

Acceptance by the Government

(Date:) —— —, ——.

Accepted as to items numbered.

Name: —— ——, Title: ——.

[fol. 182] Conditions

1. The Government reserves the right to reject any or all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. In case of error in the extension of prices in the bid, the unit prices will govern.

2. Time, in connection with discount offered, will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter date is later than the date of delivery.

3. In case of default of the contractor, the Government may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby: Provided, That if public necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefor shall be made at a proper reduction in price.

4. No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom unless it be made with a corporation for its general benefit.

5. Prices bid herein include any Federal tax heretofore imposed by the Congress which is applicable to the material on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed by the Congress after the date set for the opening of this bid, and made applicable directly upon the production, manufacture, or sale of the supplies covered by this bid, and are paid by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly, and

any amount due the contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items.

6. Unless otherwise specified by the bidder, it is understood and agreed that only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States shall be delivered pursuant to a contract awarded as a result of this bid.

7. Bids are requested on the basis that if subsequent legislation shall require observance of minimum wages and/or maximum hours of employment and/or limitation as to age of employees, in the performance of Government contracts any contract entered into shall be subject to modification to accord with such statutory requirements to the extent authorized or required by law.

Instructions to Bidders

1. Samples of items, when required, must be furnished, free of expense, prior to the opening of bids, and, if not destroyed, will, upon request, be returned at the bidder's expense.

2. Prices should be stated in units of quantity specified, with packing included.

3. Time of proposed delivery must be stated in definite terms. If time varies for different items the bidder shall so state.

4. Envelops containing bids must be sealed and marked on the upper left-hand corner with the name and address of the bidder and the date and hour of opening, and addressed as instructed.

5. To insure prompt payment, the original bill only should be certified as follows: "I certify that the above bill is correct and just, and that payment therefor has not been received."

6. For further instructions read U. S. Standard Form 22 (Instructions to Bidders).

[fol. 183] Instructions to Contracting Officers

1. If shipment is made by Government bill of lading, observe consolidated classification requirements so as to secure the lowest rate applicable.

2. Although this form meets the requirements of a formal contract (R. S. 3744), if the execution of a formal contract with bond is contemplated U. S. Standard Forms 31 and 32 should be used.

3. If there is not sufficient space on the schedule to list all of the items, insert at the bottom of the schedule "Continued on——sheets of U. S. Standard Form 36" and use that form also.

4. If it is definitely known that final acceptance cannot be accomplished within 10 or 20 days from date of delivery due to necessity for tests or analyses which cannot be accomplished within that time, delete, before issuance, the discount provision relating to 10 calendar days or to both 10 and 20 calendar days. The provision relating to discounts may also be deleted when funds do not become available so that payment may be made within such time limits.

5. If the contract is likely to involve patent liability, the article on patents as contained in U. S. Standard Form 32 should be used.

Rider

Tankwagon and/or Steel Barrel Delivery

States of:—Alabama—Mississippi—Florida and Georgia

The price paid shall be the Seller's posted tankwagon price for the grade of gasoline ordered and delivered, in effect at time and place of delivery, plus the Federal Tax, less $0.02 per gallon, price paid by the Government during the contract period, after deduction of the $0.02 per gallon discount offered above, will, in no event, exceed the maximum prices quoted herein, which prices include the Federal Tax.

States of:—Arkansas—Louisiana—South Carolina—Tennessee—North Carolina and Virginia

The price paid shall be the seller's posted commercial consumer tank car price for the grade of gasoline ordered and delivered, in effect at time and place of delivery, plus $.005 per gallon, plus the Federal Tax, price paid by the Government during the contract period, in no event to exceed the maximum prices indicated herein, which prices include the Federal Tax.

Tankcar Delivery—All States—F. O. B. Destination

The price paid shall be the Seller's tankcar price for the grade of gasoline ordered and delivered, as posted at Seller's terminal from which shipment is made (terminals are indicated under each item), on date of shipment, plus the Federal Tax, plus freight to destination, price paid by the Government during the contract period, in no event to exceed the maximum prices indicated herein, which prices include the Federal Tax and freight.

Tankcar Delivery—All States—F. O. B. Bidder's Bulk Plant

The price paid shall be the Seller's tankcar price for the grade of gasoline ordered and delivered, as posted at Seller's terminal from which shipment is made (terminals are indicated under each item), on date of shipment, plus the Federal Tax, price paid by the Government during the contract period, in no event to exceed the maximum prices quoted herein, which prices include the Federal Tax.

It is understood that the Texas Company will not charge the United States Government for any State, County or Municipal Taxes.

[fol. 184] Gas Reg. 2.
Schedule No. 2.
Bidding Form.
Issued July 29, 1935.

Opening Date, August 13, 1935.

To be Submitted in Triplicate

Specifications and Proposals

Issued by the Treasury Department,

Procurement Division, Branch of Supply, Federal Warehouse,

Washington, D. C.

Class 7.—Gasoline

For the Period October 1 to December 31, 1935

Tank Car, Tank Wagon, and Drum Deliveries

Region No. 2

1. Zones, and respective Counties therein, for each of the following named States:

Alabama

Zone 1:
Madison
Jackson
Marshall
De Kalb
Etowah
Cherokee
Calhoun
Cleburne
Talladega
Clay
Randolph

Zone 2:
Chilton
Coosa
Tallapoosa
Autauga
Elmore
Lowndes
Montgomery

Zone 2: (Continued)
Macon
Bullock
Butler
Crenshaw
Pike
Covington
Coffee
Geneva
Dale
Henry
Houston

Zone 3:
Chambers
Lee
Russell
Barbour

Zone 4:
Lauderdale

Zone 4: (Continued)
Colbert
Limestone
Lawrence
Morgan
Franklin
Marion
Winston

Zone 5:
Lamar
Fayette
Walker
Cullman
Blount
St. Clair
Pickens
Tuscaloosa
Jefferson
Bibb
Shelby

Zone 6:
Sumter
Greene
Hale
Perry
Choctaw
Marengo
Wilcox
Dallas

Zone 7:
Washington
Clarke
Monroe
Conecuh
Escambia
Baldwin
Mobile

Zones in other States omitted from record by agreement.

2. Bidder must state specifically below the trade or brand name of the gasoline, for the respective grades, he proposes to furnish. A trade or brand name for a gasoline offer will be regarded as a permanent representation of its characteristics and qualities.

G-101	Texaco	Firechief	Gasoline—Unleaded Gasoline will be furnished for Airway Beacons.
A-65	"	"	"
A-75	"	Ethyl	"
V-65	"	Firechief	"
V-75	"	Ethyl	"

3. Where metal drums (or barrels) are furnished by the contractor and are not returned to the contractor or to a common carrier (for shipment to the contractor) within 90 days after receipt by the consignee, they will be invoiced to and paid for by the Government at $6.00 per drum. If, however, such drums in good condition are, after having been paid for, returned by the Government at the expense of the Government within 12 months after date of delivery of the commodity, the contractor will allow $6.00 for each drum returned. (Bidder must fill in blank spaces—if not [fol. 185] filled in by bidder, it will be understood that the Government will not be liable or responsible for any failure to return drums.)

4. Bidders must state below, for tank wagon and drum deliveries, the method used for basing maximum prices and also the method which will be used for invoicing in event of award of contract, i. e., whether pricing (maximum and invoicing).

(I) is based on posted tank car price plus a fixed (or graduated amounts according to total monthly deliveries) number of cents (or fractions per gallon)—the fixed or graduated amounts to be specifically and clearly stated by bidder.

(Bidder) ——.

(II) is based on posted tank wagon prices less a fixed (or gaduated amounts according to total monthly deliveries) number of cents (or fractions) per gallon—the fixed or graduated amounts to be specifically and clearly stated by bidder.

I. (a) For basing maximum prices, See Rider.
I. (b) For invoicing, See Rider.
II. (a) For basing maximum prices, See Rider.
II. (b) For invoicing, See Rider.

5. Pages 6 and 7 of this Schedule and only those Price Bidding Sheets containing items on which bidder quotes prices must be returned with Standard Form 33. Bidder will please remove those Sheets containing items on which he does not quote prices. Bidder to state here the numbers of the Sheets returned.

Returning all Sheets.
(Bidder) ——.

NOTE.—In column headed "Grade", the three Federal Specification gasolines are abbreviated, i. e.: G-101, for Motor, U. S. Government VV-G-101; A-65 or A-75, for Motor-Fuel, A; V-65 or V-75, for Motor-Fuels V; There is no octane number requirements for the VV-G-101 gasoline. The minimum octane number requirements for the Motor-Fuel A and Motor-Fuel V gasolines are as indicated by the figures 65 and 75.

Alabama

Item No.	Zone	Grade	Estimated quantity gallons	Price maximum per Gal.
1	1	G-101	.....	$.1197
2	1	A-65	51,956	.1197
3	2	G-101	300	.1197
4	2	A-65	64,332	.1197
5	3	G-101	2,720	.1197
6	3	A-65	9,126	.1197
7	4	G-101	.....	.1197
8	4	A-65	175,268	.1197
9	4	A-75	4,000	.1397
10	5	G-101	14,500	.1197
11	5	A-65	23,615	.1197
12	6	G-101	.....	.1197
13	6	A-65	27,441	.1197
14	6	A-75	50	.1397
15	7	G-101	500	.1197
16	7	A-65	64,706	.1197
17	7	A-75	1,610	.1397
18	7	V-65	3,500	.1197

Items as to other States omitted from record by agreement.

[fol. 186] 323-G-8-13

Gas—Reg. 2

Tank Car Shipments

(Price Bidding Sheet)

Item No.	Activity—Destination	Grade and Octane Number (Min.)	Estimated Quantity Gallons	Price Maximum Per Gal.
181	Q.M., Fort McClellan, Ala.....	A–65	54,325	
	(a) For Delivery f.o.b. destination..	....	.....	0942
	(b) F.o.b. bidder's bulk plant.....	....	.....	0700
	Location of bulk plant Mobile, Ala.			
	Railroad serving G. M. & N.			
182	Q.M., Maxwell Field, Ala.....	A–65	47,840	
	(a) For delivery f.o.b. destination...	....	.....	0898
	(b) F.o.b. Bidder's bulk plant.....	....	.....	0700
	Location of bulk plant Mobile, Ala.			
	Railroad serving ——			
183	T. V. A., Wilson Dam, Ala.....	A–65	32,000	
	(a) For delivery f.o.b. destination...	....	.....	0942
	(b) F.o.b. bidder's bulk plant.....	....	.....	0700
	Location of bulk plant Mobile, Ala.			
	Railroad serving ——			

[fol. 187] EXHIBIT #24

Filed Oct. 24, 1935, O. D. Street, Clerk

United States Department of the Interior

Office of the Secretary,

Washington

October 4, 1935.

The Texas Company, 135 East 42nd Street, New York, New York.

GENTLEMEN:

With reference to your bid U. S. D. I. 910, which was opened in this Office on September 19, covering the proposed purchase of gasoline and lubricating oil for Bureau of Reclamation, The Administrative Division, Public Works Administration and other Interior Department activities, please be advised that you are hereby awarded a contract covering items as listed below and for the period as designated.

October 1, 1935 to June 30, 1936

Item Number	State	Maximum price per gallon: Regular Gasoline	High Test Gasoline	Lubricating Oil
1	Alabama	.198	.218	1.00
8	Florida	.175	.195	1.00
9	Georgia	.195	.215	1.00
15	Kentucky	.22	.24	1.00
25	Nebraska	.169	.189	1.00
29	New Mexico	.20	.22	1.00
34	Oklahoma	.1725	.1925	1.00
41	Texas	.172	.192	1.00

October 1, 1935 to December 31, 1935

Item Number	State	Maximum price per gallon: Regular Gasoline	High Test Gasoline	Lubricating Oil
3	Arkansas	.155	.175	1.00
5	Colorado	.243	.263	1.00
7	Delaware	.155	.175	1.00
11	Illinois	.148	.168	1.00
12	Indiana	.158	.178	1.00
13	Iowa	.16	.18	1.00
14	Kansas	.147	.167	1.00
16	Louisiana	.175	.195	1.00
18	Maryland	.155	.175	1.00
20	Michigan	.162	.182	1.00
21	Minnesota	.169	.189	1.00
22	Missouri	.143	.163	1.00
23	Mississippi	.185	.205	1.00
31	North Carolina	.171	.191	1.00
32	North Dakota	.18	.20	1.00
33	Ohio	.185	.205	1.00
38	South Carolina	.169	.189	1.00
39	South Dakota	.17	.19	1.00
40	Tennessee	.175	.195	1.00
44	Virginia	.176	.196	1.00
46	West Virginia	.166	.186	1.00
47	Wisconsin	.159	.179	1.00
48	Wyoming	.285	.305	1.00
49	District of Columbia	.148	.168	1.00

[fol. 188] This contract, number of which is I-S-1959, calls for the delivery from your service stations located in all the above mentioned states of Texaco Fire Chief gasoline and Texaco Ethyl gasoline in quantities as called for at the posted service station price in effect at time and place of delivery subject to the maximum price for each state as shown above.

Texaco Motor Oil is to be furnished at the posted retail service station price in effect at time and place of delivery with the guarantee that the maximum price chargeable will not exceed the price as quoted above.

The prices for all products quoted herein include only the Federal tax and do not include any state, local or non-applicable taxes. The Bureau of Reclamation, Administrative Division, Public Works Administration and the Indian Service have signified their intentions of participating in this contract and they are being furnished a copy of this award letter. These three bureaus and other services of the Interior Department are authorized to buy under this contract.

Each bureau making purchase will contact your office directly and it is hoped that satisfactory arrangements will be made for delivering the specified products to all employees who are properly identified and for rendering monthly invoices to each unit.

Reference: JCC—1935.

Very truly yours, W. B. Fry, Purchasing Officer.

U. S. Standard Form 33 (Revised).

Approved by the Secretary of the Treasury, Sept. 17, 1934.

Invitation No. 910.
Contract No. —.

Invitation, Bid, and Acceptance

(Short Form Contract)

(Department or Establishment) Department of the Inetrior
(Office or Station) Purchasing Office
(Address)——
(Date) —— —, ——.

Invitation

Sealed bids, in one copy only subject to the conditions on the reverse hereof, will be received at this office until 10:30 o'clock a. m., September 19, 1935, and then publicly opened, for furnishing the following supplies, and/or services, for delivery as listed herein.

(Name) W. B. Fry, (Title) Purchasing Officer.

Item No.	Articles or services.	Quantity.	Unit.	Unit Price.	Amount. Dollars.	Cents.

Gasoline and Lubricating Oil for Interior Department Activities
(Service Station Deliveries)

All the conditions of this advertisement will be incorporated as a part of any contract resulting therefrom, which shall cover the period from October 1, 1935, through June 30, 1936, but bidders may quote on a shorter period, if they so desire, but for not less

[fol. 189]

than three months.

The requirements estimated herein are those of the Bureau of Reclamation and the Administrative Division, Public Works Administration, only. The right is reserved, however, for any Bureaus of this Department to make purchase under this advertisement.

All prices quoted herein shall include any Federal tax but not to include any State or local tax.

It is agreed that if subsequent legislation shall require observance of minimum wages and/or maximum hours of employment, and/or limitations as to age of employees in the performance of Government contracts this transaction if not completed prior thereto, shall be subject to modifications to accord with such statutory requirements to the extent authorized or required by law.

Bid

(Date:) September 18, 1935.

In compliance with the above invitation for bids, and subject to all the conditions thereof, the undersigned offers, and agrees, if this bid be accepted within 30 days from the date of the opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, f.o.b. service stations as specified and, unless otherwise specified within 1 day after receipt of order.

Discounts will be allowed for payment as follows: 10 calendar days, Net percent; 20 calendar days, Net percent; 30 calendar days, Net percent.

Bidder: The Texas Company, Address: 135 East 42nd Street, New York, N. Y., by (Signature of person authorized to sign this bid:) —— ——, Title: Manager.

Acceptance by the Government

(Date:) —— —, ——.

Accepted as to items Number —.

Name: —— ——, Title: ——.

Conditions

1. The Government reserves the right to reject any or all bids, to waive any informality in bids and, unless otherwise specified by the bidder, to accept any item in the bid. In case of error in the extension of prices in the bid, the unit prices will govern.

2. Time; in connection with discount offered, will be computed from date of the delivery of the supplies to carrier when final inspection and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when final inspection and acceptance are at those points, or from date correct bill or voucher properly certified by the contractor is received if the latter date is later than the date of delivery.

3. In case of default of the contractor, the Government may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby: Provided, That if public necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefor shall be made at a proper reduction in price.

4. No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom unless it be made with a corporation for its general benefit.

5. Prices bid herein include any Federal tax heretofore imposed by the Congress which is applicable to the material on this bid. If any sales tax, processing tax, adjustment charge, or other taxes or charges are imposed or changed

by the Congress after the date set for the opening of this bid, and made applicable directly upon the production, manufacture, or sale of the supplies covered by this bid, [fol. 190] and are paid by the contractor on the articles or supplies herein contracted for, then the prices named in this bid will be increased or decreased accordingly, and any amount due the contractor as a result of such change will be charged to the Government and entered on vouchers (or invoices) as separate items.

6. Unless otherwise specified by the bidder, it is understood and agreed that only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be in the United States shall be delivered pursuant to a contract awarded as a result of this bid.

Instructions to Bidders

1. Samples of items, when required, must be furnished, free of expense, prior to the opening of bids, and if not destroyed, will, upon request, be returned at the bidder's expense.

2. Prices should be stated in units of quantity specified, with packing included.

3. Time of proposed delivery must be stated in definite terms. If time varies for different items the bidder shall so state.

4. Envelops containing bids must be sealed and marked on the upper left-hand corner with the name and address of the bidder and the date and hour of opening, and addressed as instructed.

5. To insure prompt payment, the original bill only should be certified as follows: "I certify that the above bill is correct and just, and that payment therefor has not been received."

6. For further instructions read U. S. Standard Form 22 (Instructions to Bidders.)

Instructions to Contracting Officers

1. If shipment is made by Government bill of lading, observe consolidated classification requirements so as to secure the lowest rate applicable.

2. Although this form meets the requirements of a formal contract (R. S. 3744), if the execution of a formal contract with bond is contemplated U. S. Standard Forms 31 and 32 should be used.

3. If there is not sufficient space on the Schedule to list all of the items, insert at the bottom of the schedule "Continued on —— Sheets of U. S. Standard Form 36" and use that form also.

4. If it is definitely known that final acceptance cannot be accomplished within 10 or 20 days from date of delivery due to necessity for tests or analyses which cannot be accomplished within that time, delete, before issuance, the discount provision relating to 10 calendar days or to both 10 and 20 calendar days. The provision relating to discounts may also be deleted when funds do not become available so that payment may be made within such time limits.

5. If the contract is likely to involve patent liability, the article on patents as contained in U. S. Standard Form 32 should be used.

Rider

Motor Gasoline

Regular—Texaco Fire Chief Gasoline

High Test—Texaco Ethyl Gasoline

The price paid shall be the Seller's posted retail service station price for grade of gasoline ordered and delivered, in effect at time and place of delivery, plus the Federal Tax, but exclusive of any State, County or Municipal Tax, with a guarantee that the price charged up to and including the date indicated for each item, will not exceed the maximum prices quoted herein, which prices include the Federal Tax.

Motor Oils

Texaco Motor Oil—All Grades

(Here follows one photolithograph, side folio 191)

The price paid shall be the Seller's posted retail service station price for Texaco Motor Oil in effect at time and place of delivery, including the Federal Tax, with a guarantee that the price charged up to and including the date indicated for each item, will not exceed the maximum prices quoted herein, which prices include the Federal Tax.

- -

We have indicated opposite each item, the number of service stations in each state, that will honor deliveries made with Texaco National Credit Cards or Texaco Commercial Order Books. We have not submitted a list, by states, of the towns in which service stations are maintained and from which deliveries may be made to you, for the reason that our bid covers the entire United States and the cost of compiling such a list would be excessive. We trust that information which your field men have obtained under previous contracts will be sufficient to enable you to make proper award.

We have also indicated for each item, by showing either the date December 31, 1935, or June 30, 1936, whether our proposal in these states covers the period October 1, 1935 to December 31, 1935 or for the nine month period, October 1, 1935 to June 30, 1936.

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Standard Form No. 30
Approved by the President
June 10, 1927

P. .. 40210

STANDARD GOVERNMENT FORM OF CONTINUATION SCHEDULE FOR STANDARD FORM 31 or33
(Supplies)

Item No.	Articles or services	Quantity	Unit	Unit Price	Amount Dollars	Cents
1.	Alabama: Number of Service Stations					
	Regular Gasoline	3000	gals.	w.19		
Prices good until June 30, 1936	High Test Gasoline 889	300	"	w.21		
	Lubricating Oil	150	"	w1.00		
	(Items as to other states omitted from record by agreement)					

Inasmuch as the quantities can only be estimated, the Government reserves the right to order only such quantities as are actually needed, as well as to purchase any additional gallonage as may be desired.

All gasoline furnished under requests for "regular" gasoline must be first grade, non-premium, to comply in all respects with Federal Specifications VV-G-101 and having a minimum octane rating of 65. Bids on the so-called "Third Structure" gasoline will not be considered.

Where "High Test" gasoline is specified, the product bid on must be one known commercially as first grade premium gasoline, containing Tetra-ethyl Lead and comply in all respects with Federal Specifications VV-M-571a.

Bids on lubricating oil must be on first grade non-premium oil, and must include all grades from SAE 20, through SAE 50.

The right is reserved to order any oil within the specified limits.

BIDDERS MUST STATE THE TRADE NAME OF ALL GASOLINES AND OIL OFFERED.

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V022

[fol. 192] These requirements are for service station delivery and bids on any other type of delivery can receive no consideration. Since these products are for use by Field Employees of this Department, the ability of each bidder to make service station delivery will be taken into account when award is made.

Each bidder is requested to submit with his bid a list by states of towns in which service stations are maintained and from which delivery may be made.

Bids must be submitted on complete items, and failure to do so will be cause for the rejection of any bid.

Bids are requested on the basis that if subsequent legislation shall require observance of minimum wages and/or maximum hours of employment and/or limitation as to age of employees, in the performance of Governmental contracts, any contract entered into shall be subject to modification to accord with such statutory requirements to the extent authorized or required by law. Where the bidder agrees to this condition, and in the event of such legislation, it is contemplated that the contract shall be modified in conformity with the terms thereof, with right in contractor to be reimbursed the actual additional costs made necessary thereby. Bidders should state whether or not their bids are made on this basis.

Place on envelope:

"Bid on Gasoline and Lubricating Oil for Interior Department Activities, U. S. D. I, 910, opening at 10:30 A. M., September 19, 1935."

[fol. 193] IN UNITED STATES DISTRICT COURT

[Title omitted]

Findings of Fact and Conclusions of Law

This cause coming on to be heard at this time on plaintiff's application for an interlocutory injunction as prayed in its bill of complaint, was submitted upon the bill of complaint as amended, the motion to dismiss and the answer of the defendants, the agreed statement of facts in writing and on file and a part of the record in this cause and the written affidavits introduced in evidence by the parties on

file and a part of the record in this cause, and was also by agreement of the parties, without plaintiff's waiving insistence on its said application for an interlocutory injunction, submitted for final decree upon the same pleadings and evidence, the parties being represented by their respective counsel.

Findings of Fact

The Court, upon consideration of the evidence in this cause, adopts as and for its findings of fact all the facts set forth in said written agreed statement of facts which is hereby referred to and expressly made a part hereof as fully and completely as if set out at length herein, and the following facts in addition thereto:

(1) The amount involved in this proceeding is in excess of $3,000.00, exclusive of interest and costs.

(2) As admitted by the defendant orally in open Court, the State officials have not claimed or sought to collect any taxes imposed by said gasoline excise tax acts with respect [fol. 194] to the gasoline stored in Alabama and withdrawn from storage for sale and delivery in interstate commerce.

Conclusions of Law

The Court's conclusions of law are as follows:

(1) The Alabama gasoline excise tax statutes set forth in the bill of complaint impose taxes on persons and other parties engaged in the State of Alabama in the business of selling, distributing, storing or withdrawing from storage for any purpose whatsoever gasoline and other liquid motor fuels. The statutes classify three different kinds of businesses, namely: First, selling; secondly, distributing; and thirdly, storing or withdrawing from storage such commodities. In each instance the tax is measured by the number of gallons sold, distributed or withdrawn from storage, but a tax on the business of storage alone is not imposed, the tax being only on the withdrawal from storage where such withdrawal is for use other than for sale. Double taxation is not imposed, it being the intention that the tax with respect to the same gasoline shall be paid but once. A person may be engaged in any or all of the businesses taxed, but as to the gasoline he sells he is only required to pay a tax measured by the amount of the gasoline sold, and does not

have to pay any additional or other tax for the distribution or withdrawl from storage of the gasoline which he sells. As to the gasoline which is sold the tax is measured exclusively by the number of gallons sold.

(2) The gasoline excise tax acts are unconstitutional and void in so far as they impose an excise tax on account of or with respect to sales of gasoline to the United States measured by the number of gallons sold to the United States.

(3) Even should the statutes be treated as imposing a privilege tax measured by the quantity of gasoline withdrawn from storage for sale and delivery to the United States, the necessary effect would be the same as if the tax were measured by the quantity sold, as in both instances the price to the Government for such commodity would be [fol. 195] increased by the amount of the tax, and the tax burden in each case would necessarily and directly fall on the United States. The Constitution of the United States not only forbids the imposition of an excise tax on account of or with respect to gasoline sold to the United States measured by the number of gallons so sold, but also forbids the imposition of such a tax on account of or with respect to gasoline withdrawn from storage for sale and delivery to the United States as so measured.

(4) The plaintiff has no adequate remedy at law in the premises. If it paid under protest the illegal taxes demanded by the State as they monthly mature, plaintiff would be under the necessity of instituting a multiplicity of suits for their recovery. Failure to pay the taxes imposed under the present act subjects the tax payer to a penalty of twenty-five per cent of the amount thereof, and a lien for the taxes and penalties attaches to the property of the taxpayer located in the state.

(5) As final decree is at this time being entered in this cause, it is unnecessary for the Court to grant or act separately on plaintiff's application for an interlocutory injunction.

Done this 7 day of December, 1935.

Robert T. Ervin. C. B. Kennamer.

[fol. 196] In United States District Court for the Northern Division of the Middle District of Alabama

In Equity. No. 662

The Texas Company, a Corporation, Plaintiff,

vs.

Albert A. Carmichael, Attorney General of the State of Alabama, Henry S. Long, President of the State Tax Commission of Alabama, and John P. Kohn, Sr., and W. W. Ramsey, Associate Members of the State Tax Commission of Alabama, and Bibb Graves, Governor of the State of Alabama, Defendants

Decree

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

(1) The motion of defendants to dismiss the bill of complaint be and the same hereby is overruled.

(2) The defendants, Albert A. Carmichael, as Attorney General of the State of Alabama, Henry S. Long as President of the State Tax Commission of Alabama, and John P. Kohn, Sr., and W. W. Ramsey as associate members of the State Tax Commission of Alabama, and Bibb Graves as Governor of the State of Alabama and each of them, be and they hereby are restrained and enjoined from taking any steps or instituting any legal proceedings, civil or criminal to execute or enforce the provisions of the Statutes of the State of Alabama referred to in the bill of complaint levying or imposing excise taxes on persons or other parties selling, distributing or withdrawing from storage in the State of Alabama gasoline or other liquid motor fuels where the amount of such tax is measured or determined by the number of gallons of the gasoline or other liquid motor fuels sold, distributed or withdrawn from storage in said State by such persons or other parties insofar as said statutes levy or impose excise taxes on The Texas Company, measured or determined by the quantity of gasoline or other liquid motor fuels sold to the United States or withdrawn from storage and which is sold and

delivered to the United States by it or for its account under [fol. 197] contracts between it and the United States.

(3) The defendants be and they hereby are taxed with the costs of this proceeding for which let execution issue.

Dated this 7th day of December, 1935.

C. B. Kennamer. Robert T. Ervin.

[fol. 198] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE ACCEPTANCE OF SERVICE, ETC.

Before the Honorables J. C. Hutcheson, Circuit Judge, and Robert T. Ervin and Charles B. Kennamer, District Judges, Composing the Court Consisting of Three Judges under Section 380 of Title 28 of the United States Code Annotated (Judicial Code Section 266 Amended)

It is hereby stipulated by and between counsel for plaintiff and defendants in the above styled cause that the defendants and each of them, by and through their counsel of record, accept service of the writ of injunction as ordered and decreed in the final decree in said cause of date December 7th, 1935, and agree in all respects to be bound thereby until the further orders of the Court, and it is agreed that the issuance and service of any other writ or notice is hereby waived.

Albert A. Carmichael, Attorney General of the State of Alabama; Frontis H. Moore, Asst. Atty. General of the State of Alabama; Peyton Bibb, Spec. Asst. Atty. General of the State of Alabama; Thomas J. Judge, Farley Bldg., Birmingham, Ala.; Richard T. Rives, Montgomery, Alabama, Attorneys for Defendants. John S. Coleman, Birmingham, Alabama; Bradley, Baldwin, All & White, Birmingham, Ala., Attorneys for Plaintiff.

[fol. 199] IN UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF ALABAMA

Number 662

THE TEXAS COMPANY

vs.

CARMICHAEL et al.

John S. Coleman, Solicitor for Plaintiff.
Bradley, Baldwin, All & White, of Counsel.
Albert A. Carmichael, Frontis H. Moore, Peyton Bibb, Thomas J. Judge, Richard T. Rives, Solicitors for defendants.

OPINION

Opinion by ERVIN, Judge, concurred in by KENNAMER, Judge:

This is a bill seeking to enjoin the State of Alabama from levying an excise tax on such gasoline as the complainant sells to United States Government, in which it is contended that such tax would be unconstitutional if so levied.

Hearing was had before Joseph T. Hutcheson, Circuit Judge, R. T. Ervin, and C. B. Kennamer, District Judges, on an agreement that the matter would be submitted both for a preliminary and final injunction. The submission was on an agreed statement of facts.

In this case it is contended that the Alabama statute levying an Excise Tax on gasoline is unconstitutional in so far as it undertakes to tax a sale of gasoline to the Government.

In Section 1 of the Act of 1927 amending the Act of 1923, we find a tax levied in the following words:

"To impose an excise tax on persons, corporations, co-partnership-, companies, agencies or associations *engaged in the business of selling, distributing, storing or withdrawing from storage* for any purpose whatsoever gasoline or other liquid motor fuel or device or substitutes therefor in this State; and providing for the collection and payment of such tax and distribution of the funds derived therefrom, and providing for its enforcement and fixing a penalty for the violation of any of the provisions hereof."

It will be noticed that the tax is levied on persons "engaged in the *business* of *selling,* distributing, storing or withdrawing from storage for any purpose whatsoever."

It will be observed then that the statute classified three different operations as separate businesses, namely: first, [fol. 200] selling; secondly, distributing; thirdly, storing or withdrawing from storage the gasoline. Other portions of the Act define these various businesses.

"The term 'distributor' shall include any person who shall engage in the selling of gasoline as herein defined in this state by wholesale in domestic trades but shall not apply to any transaction by such distributor in interstate commerce. The term 'retail dealer' shall include any person herein defined as a distributor who is also engaged in the sale of gasoline as herein defined, at any place in this state in broken quantities.

The term 'storer' as herein used shall include any person who ships gasoline into this State, in tank quantities and stores the same and withdraws or uses the same for any purpose."

Section 3 of the Act provides:

"every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the *selling,* distributing or withdrawing from storage for any use gasoline as herein defined in this State."

Here the tax is to be paid, not on the storage but on the sale, distribution or withdrawal from storage.

It further provides:

"The excise tax imposed by subdivision (a) of this section shall apply to persons, firms, corporations, dealers or distributors storing gasoline and distributing the same or allowing the same to be withdrawn from storage, whether such withdr-wals be for *sales* or other use—provided, that *'sellers'* of gasoline and its substitutes paying the tax herein provided may pay the same *computed and paid* on the *basis of* their *sales* as hereinafter required and storers and distributors shall compute and pay this tax on the basis of their withdrawals or distributions." (All italics mine.)

It is observed:

"That sellers of gasoline and its substitutes paying the tax herein provided may pay the same computed and paid on the basis of their sales as hereinafter required, and storers and distributors shall compute and pay this tax on the basis of their withdrawals and distributions."

Certainly sales are computed as such, while users are to be computed on the basis of withdrawals or distributions. How can it be contended then that sales are to be computed and paid as on storage? If sales are to be computed and paid on the basis of their sales how can it be contended that such sales are to be computed on the storage of gasoline?

The Act provides for monthly reports showing the amount of gasoline sold or withdrawn. Reports shall be sworn to. The Act also imposes a penalty of 25% for failure to make this report.

[fol. 201] There are several other Acts passed imposing additional taxes aggregating six cents per gallon, but they contain the same verbiage so the construction of one applies to all.

These definitions are the same in the Act approved January 31, 1935, and also in the Act of July 10, 1935, where the definition of a storer is in the following words:

"The term 'Storer' as herein used shall include any person who ships or causes to be shipped or receives, gasoline into this State in any quantities, and stores the same in any amount and withdraws or uses the same for any purpose."

It is contended by defendants that the tax is on the storage of gasoline measured by the number of gallons withdrawn from storage regardless of the purpose for which such withdrawals were made.

The Constitution, in effect, forbids the use of either sales or withdrawals of gasoline as a measure for state taxation, when made either in interstate transactions or in direct sales to the government.

In the first place we see the tax is levied on persons engaged in these separate businesses dealing in gasoline, and not anywhere on the gasoline dealt in.

First, are those engaged in the business of selling gasoline, such as retail dealers who store the gasoline in tanks

and withdraw it from tanks and deliver it into autos and such vehicles as may buy it, in other words, filling stations.

Second, the distributors or wholesalers.

Third, storers, persons who ship gasoline into the state in tank quantities and withdraw or use it for any purpose.

In each instance the tax is 'measured by' the number of gallons sold, distributed or withdrawn. It nowhere imposes a tax on storage alone.

It is manifest that no double taxation is imposed. It is also manifest that one person may be engaged in one or all these businesses, but without increasing the tax he is required to pay. If he sells the gasoline he pays so much a gallon for such as he sells, but does not have to pay an additional tax for the distribution or withdrawal of such as he has sold.

[fol. 202] Recognizing that all dealers in gasoline must first store it, Section 156.2 of the Act of 1935 says:

"The excise tax imposed by Section 156.1 hereof shall apply to persons defined in this chapter, storing gasoline and distributing the same or allowing the same to be withdrawn from storage whether such withdrawals be for *sale* or other *uses.*"

It is manifest that retail dealers or filling station operators must first store the gasoline in their tanks before they can retail it. The Act manifestly contemplates that the retail dealers and distributors will be engaged in selling gasoline while the storer does not sell it but uses it himself in some way, so that he is taxed not on the sale but on the use of the gasoline he withdraws from storage. This tax must have been imposed to cover those who brought gasoline into the state in large quantities and stored and withdrew it as needed for use to save paying the tax.

These people do not sell gasoline but use it in their own vehicles or engines.

This is what the Alabama Supreme Court had before it in the case of State vs. City of Montgomery 229 Ala. 93, where it is said:

"a tax upon the separate acts of the owner in taking his property out of storage for his own use."

"The acts in question impose a tax upon a *storer as well as* upon a *distributor* or *dealer.*"

So a storer is one who stores for his own use and not for the purpose of sale, and the tax is levied only where he withdraws the gasoline for his own use.

The Act expressly recognizes the fact that both dealers as well as users may store gasoline and withdraw it from storage where it says:

"Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the *selling*, distributing or withdrawing from storage for any use gasoline as herein defined in this State."

This seems to me to recognize the proposition that the tax is imposed not on the storage but on the use for which it is withdrawn.

In Edelman vs. Boeing Air Transp., 289 US 252, it is said:

"It is at the time of withdrawal alone that 'use' is measured for the purpose of the tax.

* * * * * * *

A State may validly tax the 'use' to which gasoline is put in withdrawing it from storage within the state and [fol. 203] placing it in the tanks of the planes, notwithstanding that its ultimate function is to generate motive power for carrying on interstate commerce."

The Act and the practice of the state has been where gasoline was withdrawn from one place of storage and placed in another no tax was imposed, yet here was a withdrawal from storage, but the purpose was not to use it or sell it, so again it was the use for which the withdrawal was made that determined whether the tax was imposed.

Suppose a man builds a large tank and stores gasoline for others at a price, he never sells or uses it, they withdraw it and place it in their filling stations for sale. He is in the business of storing gasoline, but he would pay no tax.

Or, if one figured the price would go up and he bought and stored gasoline in large quantities during a period of more than a year, he would pay no tax for that year. So we see the tax is not levied on the storage but on the use for which it is withdrawn.

Again Section 3a says:

"Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents a gallon upon the selling, distributing, or withdrawing from storage for any use gasoline as herein defined in this state, provided however, that this excise tax shall not be levied upon the *sale of gasoline in interstate commerce.*"

Why not add "or to the United States" for the one is as much protected by the Federal Constitution as the other.

Now if the withdrawal from storage of gasoline on a sale in interstate commerce is not to be taxed, why should not a sale to the U. S. Government also be exempt?

In the instant case we are not concerned with the withdrawal for use, but with the sale by one who is either a retail dealer or a distributor, or both, to the Federal Government, which seems to me to bring the facts in line with the case of Panhandle Oil Co. vs. Knox, 277 U. S. 218, where the Court says:

"The states may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of Federal functions.

* * * * * * *

While Mississippi may impose charges upon petitioner for the privilege of carrying on trade that is subject to the power of the state, it may not lay any tax upon the trans- [fol. 204] actions by which the United States secures the things desired for its governmental purpose.

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The validity of the taxes claimed is to be determined by the practical effect of enforcement in respect of sales to the government.

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Sale and purchase constitute a transaction by which the tax is measured and on which the burden rests.

* * * * * * *

To use the number of gallons sold to the United States as a measure of the privilege tax is in substance and legal effect to tax the sale.

* * * * * * *

And that is to tax the United States—to exact tribute on its transactions and apply the same to the support of the State."

If a sale by a dealer is reported as such and the tax so paid, it cannot be again imposed as on a withdrawal of the same gasoline.

The case of State vs. Montgomery ante; Nashville C. & St. L. Ry. vs. Wallace, 288 U. S. 249; and Edelman vs. Boeing Air Transp. 288, U. S. 249, involved only the withdrawal for use and not sales to the Government, and what was said would be applicable only to that feature of the Act. No right is claimed in the instant suit as to gasoline used by complainant.

It is urged that State vs. Montgomery is a construction of the Act and is binding on this Court, but it did not involve the question here presented.

Even if it did it would not bind this Court on the Federal question as to whether a sale by a dealer to the Government was exempt from state taxation.

In the Panhandle case the Mississippi Act levied a tax on the business of selling or distributing gasoline, and the Court held it invalid as to sales to the Government as the effect was to raise the price the Government would have to pay for the gasoline.

Here the tax is levied on persons engaged in the business of selling and distributing gasoline. Certainly the effect of this Act will be to raise the price the Government will have to pay for gasoline in Alabama.

"To use the number of gallons sold to the United States as a measure of the privilege tax is in substance and legal effect to tax the sale. * * *

And that is to tax the United States—to exact tribute on its transactions and apply the same to the support of the State." Panhandle Oil Co. ante.

[fol. 205] I see no difference between the two cases.

Even treating it as a tax on the withdrawal for the purpose of a sale to the Government it would make no differ-

ence as the effect would be the same, viz: to increase the price to the Government. On the argument it was admitted that if the tax was levied on the sale to the Government it would be invalid.

Then why would it not be invalid if the tax is levied on the withdrawal on a sale to the Government, as the effect would be the same?

The Court will look beyond the mere phraseology to get the substance and effect, and so judge the transaction.

It is said, however, that the plaintiff should wait until sued and then raise the question as a defense, but the Act imposes heavy penalties to be determined by the taxing authorities and they have made demand for the disputed tax, interest and penalties, and under the rule laid down in Pennsylvania vs. West Virginia, 262 U. S. 592:

"One does not have to await consummation of threatened injury to obtain preventative relief. If the injury is certainly impending that is enough."

I feel constrained to hold that so far as the Act undertakes to tax a sale to the Government, it is violative of the Federal Constitution and should be enjoined. The Act contemplates sales to be made after its passage.

[fol. 206] IN UNITED STATES DISTRICT COURT

DISSENTING OPINION

HUTCHESON, J., dissenting:

Plaintiff's bill, while general as to the collection of gasoline taxes on all sales made and to be made by it to the agencies of the Federal government, really was in two distinct portions, had two distinct objects. One was to enjoin the prosecution of suits against it on account of taxes on gasoline stored and withdrawn for sale to government agencies through a past five year period, when the ruling and recognition of the State authorities was that these sales were exempt from the tax. The other was to enjoin the claim and collection of taxes in the future on gasoline which, under sales contracts it pleaded it had made with

the United States, it would in future withdraw from storage and sell and deliver to agencies of the United States.

Upon the plainest principles, I think the collection of the back taxes may not be enjoined, for as appears from the pleadings and the agreed statement of facts, these taxes, if collected, will be collected by suit in which all of the plaintiff's defenses will be available to it. An injunction will not issue to restrain a suit, which has been or is to be brought, on the ground of the invalidity of the claim. Cavanagh vs. Looney, 248 U. S. 453; Boise vs. Boise City, 213 U. S. 276; Northport vs. Hartley, 283 U. S. 568; Champlin Ref. Co. vs. Commr., 286 U. S. 210; Yarnell vs. Hillsborough, 70 Fed. (2d) 435. I do not understand the majority opinion to hold otherwise, or that under their opinion any injunction will be granted as to past transactions. The majority opinion does hold, though, and it is from that holding I dissent, that there is equity in plaintiff's bill for an injunction as to future transactions. This injunction, as I understand the opinion, will restrain the claim and collection of taxes upon all gasoline plaintiff withdraws in future, to directly or indirectly, as described in its bill, and [fol. 207] in the agreed statement of facts, supply government agencies with which it has contracts.

My difference with the majority is fundamental. They think the tax is on the sale. With respect, I submit that it is not. The statute which lays this tax lays it on plaintiff as a storer in the State. It becomes payable by it when the gasoline is withdrawn for ultimate use by the storer, whether that use is to consume it or to part with title and possession of it by sale or otherwise. The Supreme Court of Alabama once,[1] and the Fifth Circuit Court of Appeals twice[2] has so declared. No contrary opinion has been called to my attention.

In the opinion of the majority it is said that Panhandle Oil Co., vs. Knox, 277 U. S. 218, a suit at law for taxes, controls. I do not think so. There the tax was on the sale, not as it is here on the privilege of storing. That case did

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Note 1.—State vs. City of Montgomery 228 Ala. 93, 151 So. 856.

Note 2.—Pan American Petroleum Corporation vs. State of Alabama, 67 Fed. (2d) cert. denied 291 U. S. 670; c/f Standard Oil vs. California U. S. 291, U. S. 243.

not hold, none has yet held, that taxes may not be collected merely because they fall on a person or a thing at some step in the process of getting an article to a governmental market. The contrary is well settled by the decisions of the Supreme Court as collected in Register vs. Commr. 69 Fed (2d) 607. This is made particularly clear in Trinity-farm Construction Co., vs. Grosjean, 291 U. S. 466; Here, as it was there, the taxpayer is an independent dealer. It is not a government instrumentality. The taxpayer here is a general storer of gasoline using the facilities of the State of Alabama to store its gasoline there under the protection of the police power of the State. It ought not to be doubted that in taxing its business as a storer, and in measuring the tax by the withdrawals from storage, the State of Alabama was not intending to, nor does it, tax the operations of an instrument employed by the Government of the Union to carry its powers into operation." To contend [fol. 208] that it does, seems to me to be running the principle of exemption into the ground, and doing so in connection with a tax which in most states, keeps the highway up, assists to run the schools, and generally forms perhaps, the most dependable and most generous source of revenue. I say nothing here of the wisdom or expediency of the tax. I merely note the wide, the universal employment by the State of it.

I admit that the principle of Federal exemption in the Panhandle, 277 U. S. 218, and the Grayburg, 278 U. S. 682, and of State exemption in the Indian Motorcycle case, 283, U. S. 570, was pushed further than I liked to see it pushed. But I do not, in this case, kick against the pricks. I merely insist here that the Supreme Court has made it clear that those cases went to the verge, that the claim of this goes beyond.

But if the majority is right and I am wrong, in regard to the tax as tax, the exemption as exemption, there are other reasons grounded in equitable considerations, why the injunction should not issue.

The plaintiff pleads and proves,[3] indeed, it bases its suit upon pleading and proving that the United States Govern-

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NOTE 3.—"The Company has entered into a contract with the Treasury Department, Procurement Division, Washington, D. C., designated as Contract TPS 6068 Region No.

ment will not buy gasoline from it at a price which takes the tax into consideration and that to obtain the business plaintiff has already bound itself, by contract to supply the gasoline needs of the agencies named at a price which has excluded the tax from consideration. In other words, plaintiff has absorbed the tax and thereby insured the Government at all events, from being burdened by it. Does a storer of gasoline, who in order to obtain government business has so contracted, succeed to the Government's ex- [fol. 210] emption and thereby, by a kind of subrogation, acquire an affirmative equity in advance of sales for a general injunction as to future dealings? An injunction which

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2 under the terms of which the Company is required to make tank car deliveries FOB Mobile, Alabama, to the Quartermaster, United States Army, Fort McClellan, Alabama, and also to make deliveries of gasoline FOB Mobile, Alabama, consigned to the Quartermaster, United States Army, Maxwell Field, Alabama, and also deliveries of gasoline FOB Mobile, Alabama, to Tennessee Valley Authority Wilson Dam, Alabama. This contract covers the requirements that each of these agencies or departments of the United States may require from the period from October 1, 1935, thru December 30, 1935. A copy of this contract is hereto attached marked Exhibit '23' and is made apart hereof.

"The Company has also entered into a contract with the United States Department of the Interior, which contract is designated as No. LS 1959, under the terms of which the Company is required to make deliveries thru retail service [fol. 209] stations to the United States Department of the Interior, the Administrative Division of the Bureau of Reclamation, the Public Works Administration, the Bureau of Indian Affairs, and such other bureaus of the Department of the Interior as may from time to time desire to purchase under said contract, or the requirements which said departments or agencies of the United States may need or desire to purchase in Alabama during the period from October 1, 1935, thru June 30, 1936. A copy of this contract is hereto attached."

The agencies to which plaintiff has been selling are; U. S. Shipping Board; Alabama Transient Bureau; Alabama

supervising, overseeing and auditing all of the transactions which the plaintiff will in future have, will require the court to determine as to each one as it arises, whether and to what extent, the exemption applies? I do not think so. I should not think so if the bill alleged that all of the transactions were to be with agencies exercising admittedly governmental functions. In a controversy of this kind over the imposition and collection of a State tax, valid as to all of the other business the plaintiff does, it seems to me that equity would best stay its hand, and not by injunction

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Relief Administration; U. S. Consular Service; U. S. Marine Hospital No. 13; Mississippi Warrior Service, U. S. Public Health Service; U. S. Veterans Hospital No. 91; U. S. Coast Guard Service; U. S. Naval Service, Pensacola; R. C. T. U. Unit, Alabama Polytechnic Institute; U. S. Engineers Service; U. S. Collector of Customs; U. S. Department of Commerce; U. S. Lighthouse Service; U. S. Observation Squadron; Nitrate Plant No. 2; U. S. Department of the Interior; U. S. War Department; U. S. Department of Agriculture; Finance Officer, Maxwell Field; U. S. Department of Justice; U. S. Navy Department; U. S. Quartermaster, *Maxwell Field; Federal Barge Line;* U. S. Treasury Department; U. S. Post Office Department; U. S. Veterans Administration; Public Works Administration; U. S. Naval Reserve; U. S. Veterans Bureau; U. S. Government, Washington, D. C. Civilian Works Administration; Civilian Conservation Corps; Emergency Conservation Works; Tennessee Valley Authority.

It appears that plaintiff withdraws and delivers its gasoline (a) from bulk plants; (b) from company operated service stations; (c) from consignment service stations; (d) from independent service stations, deliveries being made in tanks and title passing to operator at the time of delivery.

Both the pleadings and the facts show that when representatives of employees of government agencies with whom plaintiff has contracts get gasoline from service stations, they present identification cards showing themselves entitled to purchase such gasoline for the United States or its departments or agencies. When such gasoline is gotten from independent dealers the company replaces such gasoline without cost to them.

undertake to supervise the State's fiscal and taxing relations.

Defendant, citing pertinent Alabama statutes, insists that plaintiff has, within the decision in Matthews vs. Rogers, 284 U. S. 521, Stratton vs. St. L. & S. W. Ry. Co., 284 U. S. 530, an adequate remedy at law to pay the taxes and recover them back if they are due. Plaintiff denies that this is so. But considerations of adequate remedy at law, aside, I think this is a case in which Federal equity jurisdiction ought not to be exerted to interfere in matters involving the fiscal affairs of a State and its subdivisions, because there is lacking here a substantial showing of the existence of a right, and a really threatened and irreparable injury which demand the exercise of that jurisdiction. Pape vs. St. Lucie, 75 Fed. (2d) and cases cited at p. 869. Not that the Federal Court should here determine the validity or invalidity of the exemption claim. "All that the Federal Court should do is to announce that it will stand aloof, having inquired whether anything has happened whereby a Court of equity would be moved to act, it determines that it will not." Atlantic Coast Line vs. Florida, 295 U. S. 315.

No case has been cited, I have found none, where an injunction of this supervising kind has issued. When, as further appears from the pleadings and the agreed statement, the withdrawals which plaintiff seeks to protect from state tax will be for deliveries to government agencies without reference to whether these agencies are or are not, as to the matters they use the gasoline for, engaged in govern- [fol. 211] mental functions, there is an additional reason why a general injunction should not issue.

The agreed statement of facts as set out in Note 3 supra shows the names and to some extent, the nature of the agencies with which plaintiff has contracted for future deliveries, and in regard to which it asks the injunction. Nothing is shown, however, there or elsewhere from which it may be told as to some of these agencies, at least, whether the activities they engage in are in a tax exemption sense, governmental, or whether the uses for which the gasoline is bought will be. It is settled, by South Carolina vs. United States, 199 U. S. 437; Flint vs. Stone Tracy Co., 220 U. S. 107; Ohio vs. Helvering, 292 U. S. 360; Helvering vs. Powers, 293 U. S. 214, that "the state cannot withdraw sources of revenue from the Federal taxing power by engaging in businesses which constitute a departure from the usual govern-

mental functions, and to which, by reason of their nature, the Federal taxing power would normally extend." "The fact that the State has power to undertake such enterprises and that they are undertaken for what the State conceives to be the public benefit, does not establish immunity. The necessary protection of the independence of the State government is not deemed to go so far." Helvering vs. Powers, supra.

What the State may not, neither may the Government, do. If the establishment of departments of liquor control, as in the South Carolina and Ohio cases, and the operation of a railroad, as in Helvering vs. Powers, are not the exercise by the State of ordinary and usual governmental functions within the principle of exemption from Federal taxation, it would seem probable that some of the agencies which plaintiff's gasoline will activate will not be within the principle of exemption from State tax. At any rate, plaintiff actively claiming the exemption as a basis for the injunction, has the burden of showing that they are, and this it has wholly failed to do. Surely in these circumstances, equity should stay its hand from crippling, by a general injunction, the State's taxing power.

I dissent.

[fol. 212] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Jan. 3, 1936

To the Honorables J. C. Hutcheson, Circuit Judge, and Robert T. Ervin and Charles B. Kennamer, District Judges, Composing the Court Consisting of Three Judges under Section 380 of Title 28 of the United States Code Annotated (Judicial Code Section 266 Amended):

Now come the defendants, Bibb Graves, as Governor of the State of Alabama, Albert A. Carmichael, as Attorney General of the State of Alabama, Henry S. Long, as President of the State Tax Commission of Alabama, and John P. Kohn, Sr., and W. W. Ramsey, as Associate members of the State Tax Commission, of Alabama, and feeling themselves aggrieved by the final decree of the Court entered

on the 7th day of December, 1935 pray an appeal therefrom to the Supreme Court of the United States. The particulars wherein they consider the final decree erroneous are set forth in their assignment of errors on file and to which reference is made.

Wherefore, the premises considered your petitioners pray that an appeal in their behalf to the United States Supreme Court for the correction of the errors complained of and herewith duly assigned be allowed and granted; and that an order be had fixing the amount of bond and security to be given by these defendants as appellants and conditioned as the law directs, and they pray a reversal of said decree.

Albert A. Carmichael, Attorney General of the State of Alabama; Frontis H. Moore, Asst. Attorney [fol. 213] General of the State of Ala.; Peyton Bibb, Spec. Asst. Atty. General of the State of Ala.; Thomas J. Judge, Farley Bldg., Birmingham, Ala.; Richard T. Rives, Montgomery, Ala., Attorneys for Defendants.

[File endorsement omitted.]

[fol. 214] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Jan. 3, 1936.

To the Honorables J. C. Hutcheson, Circuit Judge, and Robert Ervin and Charles B. Kennamer, District Judges, Composing the Court Consisting of Three Judges Under Section 380 of Title 28 of the United States Code Annotated (Judicial Code Section 266 Amended):

Now come the defendants, Bibb Graves, as Governor of the State of Alabama, Albert A. Carmichael, as Attorney General of the State of Alabama, Henry S. Long, as President of the State Tax Commission of Alabama, and John P. Kohn, Sr. and W. W. Ramsey, as Associate Members of the State Tax Commission of Alabama, and in connection with their petition for appeal file the following assignments

of error on which they will rely on their appeal to the Supreme Court of the United States from the final decision of the Three Judge District Court entered the 7th day of December, 1935.

The Three Judge District Court erred

1. In overruling the motion of defendants to dismiss the bill of complaint.

2. In restraining and enjoining the defendants, and each of them, from taking any steps or instituting any legal proceedings, civil or criminal, to execute or enforce the provisions of the statutes of the State of Alabama referred to in the bill of complaint levying or imposing excise taxes on persons or other parties selling, distributing or withdrawing from storage in the State of Alabama gasoline or other liquid motor fuels where the amount of such tax is measured or determined by the number of gallons of gasoline or other [fol. 215] liquid motor fuels sold, distributed or withdrawn from storage in said State by such persons or other parties insofar as said statutes levy or impose excise taxes on the Texas Company measured or determined by the quantity of gasoline or other liquid motor fuels sold to the United States or withdrawn from storage, and which is sold and delivered to the United States by it or for its account under contracts between it and the United States.

3. In restraining and enjoining the defendants, and each of them, from taking any steps or instituting any legal proceedings, civil or criminal, to execute or enforce the provisions of the statutes of the State of Alabama referred to in the bill of complaint levying or imposing excise taxes on persons or other parties withdrawing from storage in the State of Alabama gasoline or other liquid motor fuels where the amount of such tax is measured or determined by the number of gallons of gasoline or other liquid motor fuels withdrawn from storage in said State by such persons or other parties insofar as said statutes levy or impose excise taxes on The Texas Company measured or determined by the quantity of gasoline or other liquid motor fuels withdrawn from storage, and which is sold and delivered to the United States by it or for its account under contracts between it and the United States.

4. In holding that the excise tax imposed by the statutes of the State of Alabama referred to in the bill of complaint is not a tax on the business of storage, but is only on the withdrawal from storage where such withdrawal is for use other than for sale.

5. In holding that a person engaged in the business of selling gasoline and other liquid motor fuels, and engaged also in one or more of the businesses of distributing and storing or withdrawing from storage such commodities is only required by such statutes as to the gasoline which such person sells to pay a tax measured by the amount of the gasoline sold.

6. In holding that a person engaged in the business of selling gasoline and other liquid motor fuels, and engaged also in one or more of the businesses of distributing and storing or withdrawing from storage such commodities, is not required to pay a tax for the withdrawal from storage [fols. 216-221] of the gasoline which such person sells.

7. In holding that as to gasoline which is sold, the tax is measured exclusively by the number of gallons sold.

8. In holding that the gasoline excise tax acts set forth or referred to in the bill of complaint are unconstitutional and void insofar as they impose an excise tax on account of or with respect to sales of gasoline to the United States measured by the number of gallons sold to the United States.

9. In holding that the necessary effect of the tax measured by the quantity of gasoline withdrawn from storage for sale and delivery to the United States would be to increase the price to the United States for such commodity by the amount of said tax, and that such tax burden would necessarily and directly fall on the United States.

10. In holding that the Constitution of the United States forbids the imposition of an excise tax on account of and with respect to gasoline withdrawn from storage for sale and delivery to the United States measured by the number of gallons so withdrawn from storage.

11. In holding that the plaintiff has no adequate remedy at law in the premises.

12. In not dismissing the plaintiff's bill of complaint.

Albert A. Carmichael, Attorney General of the State of Alabama; Frontis H. Moore, Asst. Attorney General of the State of Ala.; Peyton Bibb, Spec. Asst. Atty. General of the State of Ala.; Thomas J. Judge, Farley Bldg., Birmingham, Ala.; Richard T. Rives, Montgomery, Alabama, Attorneys for Defendants.

[File endorsement omitted.]

[fols. 222-224] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed Jan. 3, 1936.

It appearing to the Court in the cause stated that the defendants, Bibb Graves, as Governor of the State of Alabama, Albert A. Carmichael, as Attorney General of the State of Alabama, Henry S. Long, as President of the State Tax Commission of Alabama, and John P. Kohn, Sr., and W. W. Ramsey, as Associate Members of the State Tax Commission of Alabama, have filed their petition for appeal to the Supreme Court of the United States, and have filed therewith their assignment of errors, and also their statement as to the jurisdiction of the Supreme Court of the United States as required by Rule 12 of the Supreme Court rules duly disclosing that the Supreme Court of the United States has jurisdiction upon appeal to review the decree in question.

It is hereby ordered by the Court that the appeal prayed for be and the same is hereby allowed and granted to the Supreme Court of the United States from the decree rendered in said cause on the 7th day of December, 1935, and that said defendants give a bond with good and sufficient security in the sum of One Thousand Dollars ($1,000.00) that they as appellants shall prosecute their appeal to

effect, and answer all damages and costs if they fail to make their appeal good.

Dated this 3rd day of January, 1936.

J. C. Hutcheson, Circuit Judge. Robert T. Ervin, District Judge. Charles B. Kennamer, District Judge.

[File endorsement omitted.]

[fols. 225 & 226] Bond on Appeal for $1,000,00 approved and filed Jan. 3, 1936, omitted in printing.

[fols. 227 & 228] Citation in usual form, showing service on John S. Coleman et al., filed Jan. 3, 1936, omitted in printing.

[fol. 229] In United States District Court

[Title omitted]

Notice of Appeal—Filed Jan. 3, 1936

To the Texas Company, a Corporation, Plaintiff-Appellee:

The plaintiff in the above entitled case is hereby notified that the defendants appealed from the decree of the Court as rendered on the 7th day of December, 1935 and that said appeal will be to the Supreme Court of the United States in accordance with the citation as issued in this case.

Albert A. Carmichael, Attorney General of the State of Alabama; Frontis H. Moore, Asst. Atty. General of the State of Alabama; Peyton Bibb, Spec. Asst. Atty. General of the State of Ala.; Thomas J. Judge, Farley Bldg., Birmingham, Ala.; Richard T. Rives, Montgomery, Alabama., Attorneys for Defendants.

Service of the above notice of appeal accepted this 3rd day of January, 1936.

John S. Coleman, Birmingham, Alabama; Bradley, Baldwin, All & White, Birmingham, Ala., Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 230] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed Jan. 3, 1936

It is hereby stipulated and agreed by and between the parties hereto that for the purposes of the appeal which has been allowed herein to the Supreme Court of the United States, the Clerk is requested to prepare and forward to the Clerk of the Supreme Court of the United States a transcript of record on appeal which shall include only the following proceedings:

1. The original bill of complaint and application for interlocutory and final injunction filed herein on the 24th day of September, 1935.

2. The motion to dismiss the plaintiff's bill of complaint filed herein on the 12th day of October, 1935.

3. The order setting the application for an interlocutory injunction down for hearing before the Honorable Joseph C. Hutcheson, Circuit Judge, the Honorable Robert T. Ervin, District Judge, and the Honorable Charles B. Kennamer, District Judge filed herein on the 12th day of October, 1935.

4. The notice of the hearing on motion for interlocutory injunction to the Honorable Bibb Graves, as Governor of the State of Alabama, and to the defendants, together with the return of service of said motion returned and filed herein on the 17th day of October, 1935.

5. The answer of the defendants filed herein on the 23rd day of October, 1935.

6. The amendment to the bill of complaint making as party defendant thereto Honorable Bibb Graves, as Gov-
[fol. 231] ernor of the State of Alabama, and the acceptance of service of such amendment and stipulation therein included filed herein on the 24th day of October, 1935.

7. The appearance and joinder of Honorable Bibb Graves, as Governor of the State of Alabama, as a party defendant in the motion to dismiss the bill of complaint, and the answer filed on behalf of the other defendants, the same being filed herein on the 2nd day of November, 1935.

8. The stipulation and agreement between the plaintiff and the defendants that without waiving the plaintiff's insistence on its application for the interlocutory injunction this cause might also be submitted for final decree, the same being filed herein on the 2nd day of November, 1935.

9. The statement of the evidence and the evidence therein referred to under Equity Rule 75 stipulated and agreed to between the plaintiff and defendants, and the order approving the same, the same being filed herein on the 3rd day of January, 1936.

10. The findings of fact and conclusions of law filed by the Court herein on the 7th day of December, 1935.

11. The final decree filed by the Court herein on the 7th day of December, 1935.

12. Acceptance of service of the writ of injunction and stipulation relative thereto.

13. The opinion by Judge Robert T. Ervin, concurred in by Judge C. B. Kennamer filed herein on the 7th day of December, 1935.

14. The dissenting opinion by Judge J. C. Hutcheson filed herein on the 7th day of December, 1935.

15. The petition for appeal filed herein on the 3rd day of January, 1936.

16. The assignment of errors accompanying the petition for appeal filed herein on the 3rd day of January, 1936.

17. The statement as to the jurisdiction of the Supreme Court of the United States.

18. The order allowing the appeal and fixing the bond filed herein on the 3rd day of January, 1936.

19. Service of appeal papers and acceptance of service thereof.

[fol. 232] 20. The appeal bond and the approval of the same filed herein on the 3rd day of January, 1936.

21. The citation on appeal and acceptance of service of the same filed herein on the 3rd day of January, 1936.

22. The notice of appeal and acceptance of service of the same filed herein on the 3rd day of January, 1936.

23. This præcipe and the order approving the same filed herein on the 3rd day of January, 1936.

This the 3rd day of January, 1936.

Albert A. Carmichael, Attorney General of the State of Alabama; Frontis H. Moore, Asst. Atty. General of the State of Alabama; Peyton Bibb, Spec.

Asst. Atty. General of the State of Alabama; Thomas J. Judge, Farley Bldg., Birmingham, Ala.; Richard T. Rives, Montgomery, Alabama, Attorneys for Defendants. John S. Coleman, Birmingham, Alabama; Bradley, Baldwin, All & White, Birmingham, Ala., Attorneys for Plaintiff.

Counsel for Appellants, defendants, having submitted the foregoing præcipe, and the same having been approved and stipulated by counsel for appellee, plaintiff, the said præcipe is hereby approved and it is ordered that the Clerk transmit the original narrative of proceedings herein specified to the Clerk of the Supreme Court of the United States for the purposes of the appeal in the said cause.

This the 3rd day of January, 1936.

J. C. Hutcheson, Circuit Judge. Robert T. Ervin, [fol. 233] District Judge. Charles B. Kennamer, District Judge.

[fol. 234] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 235] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS ON WHICH APPELLANTS INTEND TO RELY AND OF THE PARTS OF THE RECORD WHICH APPELLANTS THINK NECESSARY FOR THE CONSIDERATION THEREOF —Filed Jan. 29, 1936

The appellants intend to rely upon the contentions that the specially constituted District Court erred:

1. In overruling the motion of defendants to dismiss the bill of complaint.

2. In restraining and enjoining the defendants, and each of them, from taking any steps or instituting any legal proceedings, civil or criminal, to execute or enforce the provisions of the statutes of the State of Alabama referred to in the bill of complaint levying or imposing excise taxes on persons or other parties selling, distributing or withdrawing from storage in the State of Alabama gasoline or other liquid motor fuels where the amount of such tax is

measured or determined by the number of gallons of gasoline or other liquid motor fuels sold, distributed or withdrawn from storage in said State — such persons or other parties insofar as said statutes levy or impose excise taxes on the Texas Company measured or determined by the quantity of gasoline or other liquid motor fuels sold to the United States or withdrawn from storage, and which is sold and delivered to the United States by it or for its account under contracts between it and the United States.

[fol. 236] 3. In restraining and enjoining the defendants, and each of them, from taking any steps or instituting any legal proceedings, civil or criminal, to execute or enforce the provisions of the statutes of the State of Alabama referred to in the bill of complaint levying or imposing excise taxes on persons or other parties withdrawing from storage in the State of Alabama gasoline or other liquid motor fuels where the amount of such tax is measured or determined by the number of gallons of gasoline or other liquid motor fuels withdrawn from storage in said State by such persons or other parties insofar as said statutes levy or impose excise taxes on The Texas Company measured or determined by the quantity of gasoline or other liquid motor fuels withdrawn from storage, and which is sold and delivered to the United States by it or for its account under contracts between it and the United States.

4. In holding that the excise tax imposed by the statutes of the State of Alabama referred to in the bill of complaint is not a tax on the business of storage, but is only on the withdrawal from storage where such withdrawal is for use other than for sale.

5. In holding that a person engaged in the business of selling gasoline and other liquid motor fuels, and engaged also in one or more of the businesses of distributing and storing or withdrawing from storage such commodities is only required by such statutes as to the gasoline which such person sells to pay a tax measured by the amount of the gasoline sold.

6. In holding that a person engaged in the business of selling gasoline and other liquid motor fuels, and engaged also in one or more of the businesses of distributing and

storing or withdrawing from storage such commodities, is not required to pay a tax for the withdrawal from storage of the gasoline which such person sells.

7. The holding that as to gasoline which is sold, the tax is measured exclusively by the number of gallons sold.

8. In holding that the gasoline excise tax acts set forth or referred to in the bill of complaint are unconstitutional and void insofar as they impose an excise tax on account of or with respect to sales of gasoline to the United States measured by the number of gallons sold to the United States.

[fol. 237] 9. In holding that the necessary effect of the tax measured by the quantity of gasoline withdrawn from storage for sale and delivery to the United States would be to increase the price to the United States for such commodity by the amount of said tax, and that such tax burden would necessarily and directly fall on the United States.

10. In holding that the Constitution of the United States forbids the imposition of an excise tax on account of and with respect to gasoline withdrawn from storage for sale and delivery to the United States measured by the number of gallons so withdrawn from storage.

11. In holding that the plaintiff has no adequate remedy at law in the premises.

12. In not dismissing the plaintiff's bill of complaint.

The appellants deemed the entire record as filed to be necessary for the consideration of the contentions above enumerated.

Albert A. Carmichael, Attorney General of the State of Alabama; Frontis H. Moore, Asst. Atty. General of the State of Ala.; Peyton D. Bibb, Spec. Asst. Atty. General of the State of Ala.; Thomas J. Judge, Farley Bldg., Birmingham, Ala.; Richard T. Rives, Montgomery, Ala., Attorneys for Appellants.

Service of a copy of the foregoing statement of points is hereby acknowledged on behalf of the appellee, this 25th day of January, 1936.

John S. Coleman, Birmingham, Ala.; Bradley, Baldwin, All & White, Birmingham, Ala., Attorneys for Appellee.

[fols. 238-240] [File endorsement omitted.]

Endorsed on cover: File No. 40,281. M. Alabama, D. C. U. S. Term No. 727. Bibb Graves, as Governor of the State of Alabama, et al., etc., appellants, vs. The Texas Company. Filed January 29, 1936. Term No. 727, O. T., 1935.